

(2023) 05 OHC CK 0119
In the Orissa High Court
Case No : CMP No. 240 Of 2023

Sajan Kumar Dhanuka

APPELLANT

Vs

Sakuntala Agrawal And Another

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2023) 05 OHC CK 0119

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : Amit Prasad Bose

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 30th September, 2022 (Annexure-1) passed by learned Additional District Judge, Baragarh in FAO No.26/13 of 2013-17 is under challenge in this CMP, whereby learned Appellate Court held the aforesaid appeal to be infructuous.
3. It is submitted by Mr. Bose, learned counsel for the Petitioner that I.A. No.25/39 of 2012-13 was filed in C.S. No. 03 of 2005 under Order XXXIX Rules 1 and 2 C.P.C. The order passed in the said I.A. is under challenge in the aforesaid FAO. In the meantime, C.S. No.03 of 2005 has been disposed of and RFA No. 07 of 2019 is pending for adjudication. It is his submission that since the appeal arising out I.A. No.25/39 of 2012-13 has been filed assailing the perversity of the order passed under Order XXXIX Rules 1 and 2 C.P.C., the same requires adjudication in the FAO failing which it may affect the merit of the appeal itself. He, therefore, submits that the impugned order may be set aside and the matter may be remitted back to the learned Appellate Court for adjudication of the FAO on merit.

4. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, more particularly the impugned order, it appears that C.S. No.03 of 2005 has already been disposed of since 31st August, 2019 and RFA No. 07 of 2019 is pending against the said judgment and decree. Admittedly, the order passed in I.A. No.25/39 of 2012-13 (arising out of C.S. No.03 of 2005) is under challenge in the aforesaid FAO. The said application was filed under Order XXXIX Rules 1 and 2 C.P.C.

5. When the suit has already been disposed of, any order passed under Order XXXIX Rules 1 and 2 C.P.C. becomes infructuous. As such, learned Appellate Court has committed no error in holding the FAO (arising out of I.A. No.25/39 of 2012-13) to be infructuous. If the Petitioner has any grievance with regard to the observation made in the said I.A., which may affect the merit of the appeal itself, the same may be raised at the time of hearing of RFA No.07 of 2019 following due procedure of law.

6. With the aforesaid observation, the CMP is disposed of. Urgent certified copy of this order be granted on proper application.

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