

(2023) 09 OHC CK 0130
In the Orissa High Court
Case No : CMP No.1082 Of 2023

Sukanta Kumar Pradhan And Another APPELLANT
Vs
Rudra Prasad Kar And Others RESPONDENT

Date of Decision : 18-09-2023

Acts Referred:

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

Citation : (2023) 09 OHC CK 0130

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

Bench : Single Bench

Advocate : Bibekananda Bhyuan

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

CMP NO.1082 OF 2023

1. Order dated 11th September, 2023 (Annexure-7) passed by learned Civil Judge (Senior Division), 1st Court, Cuttack in I.A. No.01 of 2023 (arising out of C.S. No.296 of 2023) is under challenge in this CMP, whereby an application filed by the Petitioners to adduce oral evidence as well as to file certain documents in the I.A., has been rejected.

2. It is submitted by Mr. Bhuyan, learned counsel for the Petitioners that I.A. No.01 of 2023 has been filed under Order XXXIX Rules 1 and 2 CPC. During pendency of the said petition, the Petitioners filed an application to adduce oral evidence in the I.A. and also to file certain documents in support of their case. Learned trial Court, while refusing the prayer of the Petitioners to adduce oral evidence in the matter, also did not accept the documents holding that the same shall be considered at the time of hearing and final disposal of the I.A.

3. It is his submission that in the meantime, the Petitioners have filed written statement enclosing the list of documents he is relying upon. Thus, there is no

difficulty on the part of the Court to accept at least the documentary evidence relied upon by the Petitioners.

4. It is further submitted that in view of the change in circumstances, the Petitioners may be permitted to move a fresh application with the aforesaid prayer before learned trial Court.

5. Taking into consideration the innocuous nature of prayer made by learned counsel for the Petitioners and that in the meantime, the Petitioners stated to have filed the written statement, this Court disposes of the CMP with a direction that in the event, the Petitioners file fresh application with the aforesaid prayer, the same shall be considered in accordance with law giving opportunity of hearing to the parties concerned, without being influenced by the observation made in the impugned order under Annexure-7.

6. Since I.A. No.01 of 2023 has been filed under Order XXXIX Rules 1 and 2 CPC, keeping in mind the nature of prayer made, learned trial Court should make endeavour to see that the said interim application is disposed of at an early date.

7. Since the CMP is disposed of without issuing notice to the Opposite Parties, they are at liberty to move for variation of this order, if they feel aggrieved.

Urgent certified copy of this order be granted on proper application.

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