

Uttam Kumar Moitra and Anr. Vs. Canara Bank, Uditnagar Branch, Represented through It's Senior Manager and Principal Officer, Uditnagar Branch

Uttam Kumar Moitra and Anr. Vs. Canara Bank, Uditnagar Branch, Represented through It's Senior Manager and Principal Officer, Uditnagar Branch

SooperKanoon Citation : sooperkanoon.com/532774

Court : Orissa

Decided On : Aug-17-2004

Reported in : 98(2004)CLT568

Judge : B.P. Das, J.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : W.P. (C) No. 5010 of 2004

Appellant : Uttam Kumar Moitra and Anr.

Respondent : Canara Bank, Uditnagar Branch, Represented through It's Senior Manager and Principal Officer, Uditna

Disposition : Petition allowed

Judgement :

ORDER

B.P. Das, J.

1. Heard Miss D. Nanda for the petitioners and Shri J. P. Choudhury for the opposite party.

2. This writ petition is directed against the order dated 19.4.2004 passed in TMS No. 40/66 of 2001 -2003 by which the Ad hoc Addl. Dist. Judge, Fast Track Court, Rourkela, has rejected the petition for adjournment filed by the present petitioners, who are the defendants.

3. From the certified copy of the order-sheets of the suit enclosed to the writ petition, it appears that on 16.4.2004 evidence from the side of the plaintiff, i.e., the present O.P., was closed and the suit was posted to the next day, i.e., 17.4.2004 for hearing of defendants side. On 17.4.2004 the defendants filed an application to adjourn the hearing for some days as it was not possible on their part to get ready to adduce evidence within so short time. The trial Court rejected the petition and directed the parties to get ready by 10 A.M. for hearing of defendants side. When the matter was taken up at 10 A.M. the defendants failed to adduce evidence for which the trial Court closed the evidence on the side of the defendants and posted the case to 19.4.2004 for arguments. On 19.4.2004 the defendants filed another petition for adjournment. The trial Court, however, rejected the said petition and after hearing the arguments of both the sides in full posted the case to 5.5.2004 for judgment allowing the parties to file their respective written arguments within five days.

4. Counsel for the petitioners submits that defendant No. 2 is an old lady and defendant No. 1 who was looking after the case on behalf of the defendants, and who had to adduce evidence in the case, was absent on 17.4.2004 as he had gone to bangalore for the cardiological treatment of his father for which the advocate for the defendants filed the petition to adjourn the hearing of the case for some days. One day thereafter, i.e., on 19.4.2004 when the suit was taken up, on similar ground advocate for defendants filed another petition for adjournment but the same was rejected. Counsel for the defendant-petitioners submits that they had not taken time earlier on any flimsy ground and on 17.4.2004 and 19.4.2004 they sought for some time on a genuine ground but the same was disallowed by the trial Court. It is argued that unless the impugned orders are set aside and an

opportunity of adducing evidence to the defendants is afforded, they would suffer irreparable loss. At this juncture, learned counsel for the opposite party-Bank submits that the impugned order shows that arguments were heard from both the sides in full. Be that as it may, the trial Court should have granted some time to the defendants to adduce their evidence and by not giving an opportunity to adduce evidence, the trial Court has committed an illegality for which the impugned orders are not sustainable in law.

5. Looking into the facts and circumstances of the case, I am of the considered opinion that the defendants in order to defend the case properly should get an opportunity to adduce evidence from their side. I, therefore, set aside the orders dated 17.4.2004 and 19.4.2004 passed by the Ad hoc Addl. Dist. Judge, FTC, Ropurkela, in TMS No. 40/66 of 2001-2003. Both the parties are directed to appear before the trial Court on 30.8.2004 and on their appearance, the trial Court shall fix a date of hearing and conclude the suit within a period of fifteen days thereof. It is made clear that no further adjournment shall be allowed to either of the parties.

The writ petition is allowed accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com