

ORISSA HIGH COURT: CUTTACK

First Appeal Nos.11, 12, 13 & 14 of 1993

From the award passed by the Sub-Judge, Second Court, Cuttack in L.A. Case Nos.4, 5, 6 & 7 of 1990.

Orissa Industrial Infrastructure Development Corporation & another	<i>Petitioners</i>
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-versus-

Sri Deba Prasad Mishra & others	<i>Opp. Parties</i>
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For Petitioners	: M/s. M.C. Choudhury, B. Mohanty, D.R. Das, S. Mohanty & B. Maharana.
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For Opp. Parties	: None
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Date of Judgment: 20.03.2008

P R E S E N T:

THE HONOURABLE KUMARI JUSTICE SANJU PANDA

S. Panda, J. This Civil Revision is directed against the order dated 14.01.2004 passed by the Adhoc Addl. District Judge-cum-Fast Track Court No.IV, Bhubaneswar in M.S. No.132 of 1993 dismissing the same as not maintainable.

2. The brief facts of the case are as follows:

The petitioners as plaintiffs filed the suit for recovery of Rs.10,00,000/- (Rupees Ten Lakhs) as damages for publication of defamatory news items and for permanent injunction. Plaintiff no.1-the Orissa Industrial Infrastructure Development Corporation is a trading Corporation established under the Orissa Industrial Infrastructure Development Corporation Act,

1980, for making available infrastructure facilities for industrial projects in the State. The case of the plaintiffs is that they executed several projects and invested money in order to augment its resources by way of interest earned from financial institutions including A.B.F.S.L. During August, 1992 and on 27.10.1992, 15.12.1992, 18.12.1992, 4.1.1993, 17.1.1993 and 13.2.1993, some defamatory publications were made in the Oriya daily "The Samaj" and the Weekly Samaj. Each news item and story published on those dates was defamatory and maliciously designed against the plaintiffs. On the face of the news item, it appears that plaintiffs-petitioners accepted bribe and indulged themselves in corruption for which the Corporation became 'bankrupt'. The stories referred to the Security Scam that created sensation at the relevant time and further allege gross 'criminal activities' of the plaintiffs in the investment linking with Security Scam. The Journalist, the Editor and the Publisher of the daily Samaj and opposite no.4 (the defendants in the court below) without any just cause or excuses made the publications against the plaintiffs. As the aforesaid stories published in the newspaper were defamatory, plaintiffs filed the suit.

3. The defendants-opposite parties appeared before the court below on 19.1.1994 and thereafter on 19.12.2003 they filed their written- statement and the publications relating to the very same news item made in Sun Times, The Telegraph, Sambad and other papers. They also filed an application alleging therein that plaintiff no.1, a body corporate, not being a trading corporation, cannot maintain a suit. The plaintiffs-petitioners filed their objection to the said petition. Thereafter, the suit was transferred to the Fast Track Court No.IV, Bhubaneswar. Said court, instead of framing the issues, directed for hearing of the petition for maintainability of the suit. The petitioners-plaintiffs raised an issue first that the question whether or not the

plaintiff is a trading corporation is not available to be heard as a preliminary issue, as there is no bar for a statutory corporation to maintain a suit for damage for defamation. The court below, instead of taking into consideration the question of maintainability of the suit, took into consideration the merit of the suit without any evidence on record and after analyzing the news item, it held that it appears from the news that the same was not maliciously designed against the plaintiffs and hence the suit was not maintainable.

4. The learned counsel for the petitioners submitted that the court below should not have considered the merit of the suit while considering the question of maintainability of the suit and no material was available before it as the parties had not adduced any evidence. According to him, the court below exercised its jurisdiction with material irregularity and therefore, interference of this court is required.

5. Before going to the merit of the case, this Court should first examine whether the Civil Revision is maintainable or not. After the amendment made in the Civil Procedure Code (by Act of 1999 w.e.f 1.7.2002), Section 115, CPC reads as under :-

“115. Revision – (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit :

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation – In this section, the expression, “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.”

But in the present case, the plaintiffs are aggrieved by the impugned order and had the objection been accepted or the order been passed in favour of the

plaintiffs, the suit could not have been finally disposed of, rather the suit would have continued. Hence, the case is not coming under the Proviso to Section 115 (1) of the CPC.

6. Hence, in view of the decisions of the apex Court reported in AIR 2003 SC 3044 (Surya Dev Rai v. Ram Chander Rai and others) and 96(2003) CLT 201 (SC) (Shiv Shakti Cooperative Housing Society, Nagpur v. M/s. Swaraj Developers & others), this civil revision at the instance of the plaintiffs is not maintainable. The same is dismissed as not maintainable. However, it is open for the plaintiffs-petitioners to take appropriate steps against the impugned order as available under the law.

There shall be no order as to cost.

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S. Panda, J.

High Court of Orissa, Cuttack
Dated /Amit