

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 17th Dec. '14.

Civil Revision No.45 of 2014.

[Arising out of order dated 23.07.2014 passed by the learned 1st Addl. Civil Judge (Sr. Division), Bhubaneswar in C.S. No.310 of 2010.]

1. Sumitra Mohanty, aged about 34 years,
W/o. Ranjit Mohanty.
2. Ranjit Mohanty, aged about 39 years,
S/o. Bhagirathi Mohanty.
Both are at Plot No.689, Behera Sahi,
P.S. – Nayapalli, Bhubaneswar, Dist. – Khurda.

... **Petitioners.**

-V e r s u s-

Radhamani Panigrahi, aged about 62 years,
W/o. Natabar Panigrahi, Vill. – Badasingh,
P.S. – Binjharpur, Dist. – Jajpur. At present : EB-260,
Laxmisagar Brit Colony, Stage-II, P.S. – Laxmisagar,
Bhubaneswar, Dist. – Khurda.

... **Opp. Party.**

Counsel :

For Petitioners -- Shri P.M. Pratihari &
Associates.

For Opposite Party-- Shri R.R. Mohanty & Associates.

Date of conclusion of arguments : 16.12.2014.

Date of order : 17.12.2014.

O R D E R

This revision is directed against the order dated 23.07.2014 passed by the learned 1st Addl. Civil Judge (Sr. Division), Bhubaneswar in C.S. No.310 of 2010, rejecting the petition filed by the defendants (petitioners herein) under Order 7, Rule 11(a) & (d) of the C.P.C.

2. Both parties have been heard in the matter. Perused the petition, objection, impugned order, order dated 07.05.2014 of the Hon'ble High Court in C.M.P. No.551 of 2014, plaint, written statement and lower Court record.

3. It is revealed from the plaint that the present opposite party, who is the plaintiff before the Court below, has filed the suit for eviction and realization of arrear rent and damages. On the other hand, the present petitioners being the defendants have taken the plea in their written statement, inter alia, that no Notice under section 106 of the Transfer of Property Act, 1882 (hereinafter called "the Act") has been served for which the suit is not maintainable. At the same time, it is their claim that they are not tenants under the

opposite party. No plea has been taken in the written statement that the plaint is liable to be rejected under Order 7, Rule 11 of the C.P.C. However, they filed a petition in the Court below to reject the plaint under Order 7, Rule 11(a) & (d) of the C.P.C., which was not considered favourably by the learned trial Court.

4. It is well settled law that a petition under Order 7, Rule 11 of the C.P.C. can be filed at any stage for rejection of the plaint for which even if such petition has been filed in a belated stage cannot be said to be not maintainable. The sole ground taken by the petitioner in this revision is that due to non-averment of due service of Notice under section 106 of the Act, there is no cause of action to file the suit and, as such, the plaint is liable to be rejected. On the contrary, while bringing the notice of the Court to para-12 of the plaint, learned counsel appearing for the opposite party submitted that Notice dated 10.06.2008 under section 106 of the Act was sent to vacate the premises, but such Notice did not yield any result for which she filed the suit. The learned trial Court has also rightly observed in the impugned order that the issue with regard to service of Notice under section 106 of the Act is a matter to be considered at the time of disposal of the suit. Be that as it may, the fact remains that here is a suit where the

relationship between landlord and tenant will be determined besides deciding the service of Notice under section 106 of the Act. It is not a case where there is no averment in the plaint that Notice under section 106 of the Act for determination of tenancy has not been duly served. It is well settled law that if a suit for eviction is based upon a relationship of landlord and tenant between the plaintiff and the defendant and if there is no averment in the plaint that Notice under section 106 of the Act determining the tenancy has been duly served, then the plaint is fit to be rejected under Order 7, Rule 11 of the C.P.C. But, in the instant case, no such fact has emerged because of the observation made above.

5. Considering the above principle of law and the fact that there is already averment made in para-12 of the plaint that Notice dated 10.06.2008 under section 106 of the Act having not yield any result for eviction, which is also reinforced in para-13 that another Notice returned undelivered on 28.06.2008 with remarks “addressee not found”, there is cause of action to file the suit as the petitioners are trying to avoid the process of eviction from the suit premises. So, the learned trial Court has rightly observed in the impugned order that the dispute with regard to Notice under section 106 of the Act will be decided in the suit. On the other hand, it is not a fit case to

consider the prayer of the petitioners particularly when they are to lead further evidence in compliance with the order of the Hon'ble High Court passed in C.M.P. No.551 of 2014. The petition filed to reject the plaint under Order 7, Rule 11 of the C.P.C. is just a dilatory tactics adopted by the petitioners to use the provisions of the C.P.C. in a subtle manner not being in consonance with law, but just to protract the litigation and cause obstruction to the flow of justice, without following the order of the Hon'ble Court in true spirit.

6. The up-shot of the aforesaid discussion is to hold that there is no justifiable ground to interfere with the impugned order of the learned lower Court and, as such, the present revision being bereft of any merit is liable to be dismissed. Hence ordered :

O R D E R

The revision is dismissed on contest against the opposite party with cost. The order dated 23.07.2014 passed by the learned 1st Addl. Civil Judge (Sr. Division), Bhubaneswar in C.S. No.310 of 2010 is hereby confirmed.

It is directed that the learned lower Court will dispose of the suit preferably by the end of December, 2014 by giving reasonable opportunity to both parties, as three

witnesses have already been examined from the side of the petitioners.

Both parties are directed to cooperate the learned trial Court for disposal of the suit in time.

**District Judge, Khurda
at Bhubaneswar.**

17.12.2014.

Dictated, corrected by me and pronounced in the open Court this day the 17th December, 2014.

**District Judge, Khurda
at Bhubaneswar.**

17.12.2014.