



IN THE HIGH COURT OF ORISSA AT CUTTACK
WA No.203 of 2025

Niranjan Rout and others ***Appellants***

Mr. Sudhansu Sekhar Jena, Advocate

-versus-

Sri Sri Lord Lingaraj Mahaprabhu ***Respondents***
Bije, Nijigaon, Bhubaneswar and
others

Mr. Bimbisar Dash, AGA

CORAM:
THE HON'BLE THE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

Order No.

ORDER
30.04.2025

01. This matter is taken up through Hybrid mode.
2. The instant writ appeal arises from an order dated 20.12.2024 passed by the Single Bench in W.P.(C) No.18348 of 2023, whereby and where under the writ petition was disposed of as the writ petitioners/appellants have already approached the Civil Court raising the issue involved in the instant writ petition.
3. Learned counsel for the appellants submits that the writ Court should not have proceeded to dismiss the writ petition on the ground that the Civil Suit is pending, but should have directed the notice to be issued and an opportunity be given for hearing. It is further submitted that the private opposite parties in the writ petition are not arraigned as party in the Civil Suit and, therefore, the writ Court could not have dismissed the writ petition on the ground that the Civil Suit filed by the appellants is pending and, therefore, the Court cannot dismiss the writ petition as not maintainable.



4. We appreciate the agony and anguish shown by the appellants on the dismissal of the writ petition at the threshold, but equally we cannot overlook the fact that the writ Court may refuse to exercise its discretion under Article 226 of the Constitution of India if the issue raised therein is either amenable to be decided in an other efficacious alternative forum or once the approach is already made to such forum. It is not an absolute principle in law that the moment the writ petition is filed, the Constitution Court is bound to issue a notice and cannot proceed to dismiss the writ petition at such a stage. In the event, the writ Court finds that no legally enforceable right or infringement of Constitutional right or a fundamental right or a statutory right is pleaded, there is no fetter on the part of the writ Court to dismiss the writ petition at the nebulous stage of its admission. We, therefore, could not persuade ourselves to agree on the proposition that the moment the writ petition is filed the notice is inevitable and the Court cannot dismiss the said writ petition at the threshold.

5. It appears that the appellants are beleaguered between the maintainability of the writ petition with the entertainability of the writ petition. The writ petition may be maintained, but the Court may refuse to entertain the same by providing reasons. There is gulf of difference between the maintainability and entertainability and, therefore, the contention of the learned counsel for the appellants that the writ petition is dismissed as not maintainable does not appear to be a correct term. The state of affairs, as we find from the tenet of the order, that the writ petition was dismissed as not entertainable.

6. Furthermore, the appellants have approached the Civil Court by filing a civil suit claiming their right in respect of the property which is also the subject-matter of dispute in the writ petition. The plaintiff



being a *dominus litis* can implead the parties as defendants and cannot segregate or dissect the array of parties in different proceedings. If the infringement of the right is common to several persons, they can be impleaded as a party-defendants and if the appellants have left out the present private respondents to be impleaded as defendants therein, they cannot take the benefit thereof.

7. It admits no ambiguity on a settled proposition of law that refusing to exercise discretion is within the domain of the Constitution Court as it is not a rule of compulsion but of discretion. The moment the Single Bench exercises its discretion in not entertaining the writ petition on the ground of alternative efficacious remedy, it is not open to the appellate Court to interfere with such discretionary order unless such discretion is exercised unreasonably, irrationally and in violation of the settled parameters of law in this regard.

8. From whatever angle we look at, we do not find the ultimate decision taken by the Single Bench in refusing to entertain the writ petition on the ground of an efficacious alternative remedy having already exhausted and, therefore, the instant appeal is dismissed.

Urgent Photostat certified copy of this order, if applied for, be given to the appellants within three days from date.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

Signature Not Verified

Digitally Signed
Signed by: **WIKAS KANT MOHAPATRA**
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 01-May-2025 18:55:45

