IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.188 of 2019

CNR No. ODHC010116072019

An application under Article 227 of the Constitution of India

1. Ganesh Chandra Rout .... Petitioner

-versus-

1. State of Odisha represented through Collector, Kendrapara
2. Dr. Pratap Chandra Mishra
3. Rama Chandra Gouda
4. Subash Chandra Nathsharma
5. Kshyama Sagar Panda
6. Suresh Ranjan Ray
7. Pranab Kishore Biswal
8. Deva Prasad Das
9. Satyabrata Jena
10. Sridhara Swain .... Opposite Parties

Advocates appeared in the case :

For Petitioner : M/s. S.S.K. Nayak, Kintara, A. Behera, G.C. Ray & S.K. Panda,

For Opp. Parties : Mrs. Usharani Padhi, Additional Standing Counsel. (for O.P. No.1)

: M/s. G.R. Mohapatra, M. Mohapatra, A. Dash & M.R. Pradhan . (for O.P. No.5)

CORAM:
THE HON'BLE MR. JUSTICE MRUGANKA SEKHAR SAHOO

J U D G M E N T

Date of Hearing and Judgment:10.11.2026

MRUGANKA SEKHAR SAHOO, J.

1. Mr. Nayak, learned counsel for the Petitioner and Mr. Mohapatra, learned counsel for the Opposite Party No.5 were heard at some length.

2. The CMP has been filed with the following prayer:

> *"…to admit this case and after hearing the petitioner's advocate to set-a-side the Order dated. 18.1.2019 passed in I.A. No.482 of 2012 (Arising out of C.S. No.251/2009) by the court of Civil Judge (Senior Division), Pattamundai."*

3. The Petitioner is aggrieved by the order dated 18.01.2019 passed in I.A. No.482 of 2012 arising out of C.S. NO.251 of 2009. The said order was passed by the learned Civil Judge (Senior Division), Pattamundai (Annexure-3 to the Writ Petition). The operative portion of the order is reproduced herein:

> *"Heard. Perused the case record, it is found that the present case No.482/12 U/o.39, Rule-2(A) CPC has been filed on dtd.12-11-2012 and on 08-09-2017 for the first time the petitioner examined himself as P.W.1. Thereafter, since that date number of adjournments have given to the petitioner to adduce evidence on his-behalf but the petitioner knowingly delay the proceeding of 'the case by filing number of petitions for time to adduce his evidence. <u>As discussed in aforesaid that this is a case of the year 2011. From 2012 till date</u>*

the petitioner examined himself as only P.W.1. Although number of adjournments have been given to him to adduce evidence from his behalf this shows the intention of the petitioner is nothing but to delay the proceeding of the case. Hence, the petition stands© rejected. Put up on 14.2.19 for hearing of I.A."

4. The facts and submissions of the parties have been noted by the learned trial Court in I.A. which is reproduced herein:

> *"This order arises out of the petition dtd.14-08-2018 filed by the petitioner U/o.18, Rule-17,.r/w Section 151 of the CPC praying therein to recall the order dtd.24-07-2018 and allow the petitioner to adduce further evidence on his behalf.*
>
> *It is submitted in the petition that the petitioner has instituted the misc case U/o.39, Rule-2(A) CPC against the Opp. Parties. The petitioner himself examined as P.W.1 and he Has been cross-examined by the Opp-Parties and the case was posted to 24-07-2018 for adducing further evidence from the side of the petitioner. But due to the illness, the petitioner could not attend the court to move the petition: for which.-the evidence from the side of the, petitioner was closed and the case was posted to 20-08-2018 for adducing evidence on behalf of the Opp. Parties. If the order did 24-07-2018 is not recalled and the petitioner is not given the opportunity to adduce further evidence then the petitioner shall suffer irreparable loss.*
>
> *Objection filed by Opp. Party Nos. 1 to 8. The Opp. Party No.10 filed his separate objection. It is submitted in both the objection that the present petition is to file only to linger the proceeding of the case. The petitioner was given enough opportunity to adduce his evidence but the petitioner intentionally took several adjournments to adduce his evidence only to delay the proceeding of the case for which this Court on 24-07-2018 rejected the petition for time filed by the petitioner and posted the case for adduce evidence from the side*

of Opp. Parties. Hence, the present petition is liable to be dismissed."

5. Having heard the learned counsel for the parties on 27.10.2026 the following order was passed by this Court:

> "**1.** Pursuant to the order dated 30.09.2026 report has been received from the learned Civil Judge (Senior Division), Pattamundai by letter dated 07.10.2026 which is placed at Flag-10.
>
> **2.** On perusal of the said report, it is apparent that OS. No.251 of 2009 has proceeded, further evidence has been adduced, the witnesses after examination and cross-examination have been discharged and the suit is posted to 13.10.2026 for hearing and argument.
>
> **3.** Learned counsel appearing on behalf of her leader Ms. Behera, learned counsel submits that she shall obtain instruction.
>
> **4.** The matter shall be listed 'For Orders' in the week commencing 09.11.2026."

6. The learned Civil Judge (Senior Division), Pattamundai has furnished the present status of the case by his Letter No.470 dated 07.10.2026. The report of the learned Civil Judge (Senior Division) is reproduced herein:

> *"This Is a suit for declaration instituted on 08.06.2009. All the defendants appeared on 10.07.2009. On 25.02.2010 all the defendants were set ex parte and the case record was posted to 29.04.2010 for evidence. On 29.04.2010; ail the defendants filed their written statement along with a petition to set aside the order passed against them. Accordingly the petition was allowed and the WS filed by them was accepted. The case record was posted to 23.04.2011 for settlement of issues. After disposal of various petitions issues were settled on 16.01.2015. Then the case record was posted to 04.05.2015 for hearing of the suit.*

On 22.03.2017 a petition u/o-1 rule 10(4) read with section 151 of CPC was filed to implead Sridhar Swain and Guru Charan Rout as defendants and the same was allowed on 10.05.2019. After filing of their WS the case record was posted again for settlement of issues. After settlement of issues and disposal of several petitions the case record was posted to 03.09.2025 for evidence from the side of the plaintiffs. Two witnesses on behalf of the plaintiffs were examined, cross examined and discharged. On 22.07.2026 evidence from the side of plaintiffs was closed and the case record was posted to 07.08.2026 for evidence from the side of the defendant No. 1 to 6. On 24.08.2026 evidence from the side of defendant No. 1 to 6 was closed and the case record was posted to 07.09.2026 for evidence from the side of defendants No. 7 & 8. On 28.09.2026 one witness on behalf of the defendant No. 7 & 8 was examined, cross examined and discharged. On 07.10.2026 the evidence from the side of defendant No 7 & 8 is closed. Now the case record is posted to 13.10.2026 for hearing of argument."

7. The facts those are relevant for present adjudication are that after filing of the written statement and after settlement of issues and disposal of several applications by the plaintiffs, the matter was posted to 03.09.2025 for evidence from the side of the plaintiffs. Two witnesses on behalf of the plaintiffs were examined, cross-examined and discharged.

On 22.07.2026 evidence from the side of the plaintiffs was closed. Evidence from the side of defendant nos. 1 to 6 was closed on 24.08.2026. The witnesses on behalf of the defendant no.7 & 8 were examined and discharged on 28.09.2026. On 07.10.2026 the evidence on behalf of

defendant nos.7 & 8 was closed. The matter was posted to 13.10.2026 for hearing of arguments.

8. The relevant provision that requires consideration Order 18, Rule 17 of the CPC is reproduced for convenience of reference:

> *"**17. Court may recall and examine witness**- The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."*

9. In considered view of this Court after the evidence is closed on behalf of the plaintiffs in the suit nothing further remains in the present application arising out of an application under Order 18, Rule 17 read with Section 151 of the CPC to recall the order dated 24.07.2018 to adduce further evidence on behalf of Petitioner.

In considered view of this Court, in the Misc. Case under Order 39, Rule 2(A) of the CPC filed by the plaintiffs against the defendants no further evidence can be allowed to be adduced as the same is only a interlocutory application and the evidence in the suit has been closed. It also has to be noted that prior to filing of the petition, the plaintiff-Petitioner had adduced evidence as P.W.1 and was cross-examined by the Opposite Parties.

10. Interim order dated 27.2.2019 has not been further extended. The suit has proceeded further and it is posted for arguments. Accordingly, the interim order stands vacated.

11. In view of the above discussions, in considered opinion of this Court, nothing survives for adjudication in the present petition by this Court.

The CMP is disposed of accordingly.

12. Copy of this order shall be forwarded by the Registry to the learned Civil Judge (Senior Division), Pattamundai to be kept in the records of C.S. No.251 of 2009.

(Mruganka Sekhar Sahoo)
Judge

Orissa High Court, Cuttack
The 10th November, 2026/Amit

Signature Not Verified
Digitally Signed
Signed by: AMIT KUMAR MOHANTY
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 13-Nov-2026 09:59:33