IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.403 of 2026

Debashish Pattnaik ..... ***Petitioners***

Represented by Adv. –
Mr. Jagajit Panda

-versus-

Susri Sarita Pattnaik and others ..... ***Opposite Parties***

Represented by Adv.-
Mr. Krupasindhu Sahoo,
Advocate for Caveator-O.P. No.1

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA
ORDER
09.04.2026

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Head the learned counsel for the Petitioner. Perused the CMP application as well as the documents annexed thereto.

3. The Respondent No.1 before the First Appellate Court, who was Plaintiff in C.S. No.267 of 2022 disposed of by learned Senior Civil Judge, Nimapara, has approached this Court by filing the present CMP application under Article 227 of the Constitution of India thereby challenging the order dated 02.02.2026 passed by the learned District Judge, Nayagarh in R.F.A. No.29 of 2024

4. Learned counsel for the Petitioner, at the outset, contended that the Petitioner as Plaintiff has filed a suit for declaration which

was decreed. Thereafter, the Appellant-Defendant No.3 has preferred RFA No.29 of 2024. He further contended that the said First Appeal was filed with delay of 1 year and 3 months. Therefore, the appeal memo was filed along with an application under Section 5 of the Limitation Act for condonation of delay of 1 year 3 months. Learned First Appellate Court condoned the delay vide order dated 02.02.2026. Being aggrieved by such condonation of delay by the First Appellate Court, the Petitioner has approached this Court by filing the present CMP application.

5. Learned counsel for the Petitioner, in course of his argument, submitted that the Petitioner has assailed the order dated 02.02.2026 on the ground that while condoning the delay, the learned First Appellate Court has not given sufficient reasons for condonation of such delay. He further contended that the Appellant-Defendant No.3 has failed to explain the delay in approaching the First Appellate Court. In such view of the matter, learned counsel for the Petitioner contended that the order dated 02.02.2026 condoning the delay in presentation of the First Appeal is illegal and arbitrary and, as such, the same is liable to be set aside.

6. Having heard the learned counsel appearing for the Petitioner, on a careful examination of the factual background of the present case, further on a close scrutiny of order dated 02.02.2026, this Court found that the learned First Appellate Court has condoned the delay of 1 year 3 months in presenting the appeal before the learned First Appellate Court. On a close scrutiny of the grounds taken in the limitation application as well as the order dated 02.02.2026, this Court is of the view that the same does not

call for any interference by this Court. Moreover, the power to condone delay is discretionary in nature, and the learned First Appellate Court having exercised it power subject to its satisfaction, it would not be fair and proper on the part of this Court to exercise its jurisdiction under Article 227 of the Constitution of India. As such, this Court is not inclined to interfere with the order dated 02.02.2026.

7. However, while disposing of the present CMP application, the cost imposed by the learned First Appellate Court is enhanced from Rs.500/- (Rupees five hundred) to Rs.2,000/- (Rupees two thousand) which shall be paid to the Respondents by the Appellant in the court below within two weeks from the date of production of a certified copy of this order.

8. Further, on the request of the learned counsel for the Petitioner, learned First Appellate Court is directed to expedite the hearing of the Frist Appeal. Parties are directed to cooperate with the learned First Appellate Court for early disposal of the First Appeal.

9. With the aforesaid observation and direction, the CMP stands disposed of.

(A.K. Mohapatra)
Judge

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