IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.481 of 2016
CNR No.ODHC010240402016

Netramani Meher .... ***Petitioner***

Mrs. Debadeepta Sahoo, Advocate

-versus-

Madhu Kumbhar .... ***Opp. Parties***

Mr. G.N. Parida, Advocate

CORAM:
JUSTICE MRUGANKA SEKHAR SAHOO

ORDER
28.10.2026
(*Hybrid Mode*)

Order No.
07. **1**. The matter was presented before this Court on 21.03.2016. Notices were issued by the coordinate Bench on 07.04.2016. The coordinate Bench by order dated 27.07.2026 had directed thus:

> *"1. This CMP has been filed challenging the order dated 05.03.2016 passed by the learned Civil Judge (Senior Division), Patnagarh in CMA No. 23 of 2013 arising out of C.S. No. 69 of 2000 dismissing the application under Order 9 Rule 9 of the CPC.*
>
> *2. Notice in this application has been issued on 07.04.2016. The relevant portion of the order dated 07.04.2016 is extracted below:*
>
> *"Heard.*
>
> *Issue notice.*
>
> *Let notice of admission be issued to the Opposite Party by Speed Post indicating*

therein that the matter shall be disposed of at the stage of admission.

Requisites for such issuance of notice shall be filed by 11th April, 2016.

Put up this matter in the week commencing 16th May, 2016."

3. Office note indicates that the notice in admission matter could not be issued to the Opposite Party as the requisites were filed without postal stamp.

4. More than 10 years have elapsed in the meanwhile.

5. List this matter on 03.08.2026 to enable learned counsel for the Petitioner to convince the Court that notice should be issued to the Opposite Party by permitting filing of postal requisites after lapse of so many years."

2. Thereafter on 03.08.2026, the following order was passed by the coordinate Bench.

"1.This CMP has been filed by the plaintiff-Petitioner challenging the order dated 05.03.2016 passed by the learned Civil Judge (Senior Division), Patnagarh in CMA No. 23 of 2013 arising out of C.S. No. 69 of 2000 rejecting the petition filed by the Petitioner under Order 9 Rule 9 of the CPC.

2. Perusal of the impugned order reveals that the suit had been dismissed on 16.09.2005 as the plaintiff-Petitioner failed to attend the Court. Thereafter CMA No. 23 of 2013 was filed after 8 years. Holding that there is no material for the plaintiff to show that her husband was ill on 16.09.2005 for which nonappearance was beyond her control, the petition was rejected.

3. This order is under challenge in this CMP.

4. This Court after hearing the learned counsel for the Petitioner, on 07.04.2016 directed for issue of notice to the Opposite Party by Speed Post and for filing of requisites by 11th April, 2016 and directed the matter to be listed in the week commencing 16th May, 2016.

5. From the Office note, it is apparent that notice could not be issued to the Opposite Party for non-filing of postal fee. It is also apparent that the matter was not listed for more than ten years and was listed on 27.07.2026 with the noting that notice in admission matter could not be issued to the Opposite Party as requisites were filed without postal stamp.

6. Postal requisites were filed on 27.07.2026, but the matter was adjourned to today to enable the learned counsel for the Petitioner to convince the Court that notice should be issued to the Opposite Party by permitting filing of postal requisites after lapse of so many years.

7. Mr. A.P. Bose, learned counsel for the Petitioner submits that inadvertently postal requisites could not be filed earlier. But this was not intentional and could not be detected immediately as the matter was not listed by the Registry. He further submits that the Petitioner should not suffer for the fault of her counsel. As the postal requisites have already been filed, the same should be accepted and notice issued to the Opposite Party, so that the matter can be adjudicated on merit . He further submits that had the Registry listed the matter promptly, pointing out the non-filing of postal requisites, the same would have filed immediately and this situation would not have arisen. 8. From perusal of the impugned order, it is apparent that the suit had been dismissed for default on 16.09.2005 and thereafter the petition under Order 9 Rule 9 of the CPC which was filed after 8 years was again dismissed on 05.03.2016. The CMP has been filed promptly thereafter. But on account of non-filing of postal requisites notice could not be issued to the Opposite Party for the last ten years.

9. In the process, more than 20 years have elapsed. A right has therefore be accrued in favour of the Defendant-Opposite Party, who will be put to great hardship if he is required to contest the CMP at this stage of time.

10. It is due to the oversight of the learned counsel for the petitioner that postal requisites were not filed for all these years. But the petitioner is also to blame as she has not tried to find out about the status / fate of case for all these years from her counsel.

11. The Registry is also at fault for not listing his case for all these years.

12. Therefore, in order to strike a balance between the rights of the plaintiff and the defendant, requisites filed for issue of notice are accepted but subject to deposit of cost of Rs.6,000/- by the Petitioner in this Court within a period of two weeks which shall be paid to the Opposite Party on his appearance in the CMP.

13. Notice be issued to the Opposite Party, making returnable within four weeks.

14. List this case on 21st September, 2026 along with the postal tracking report.

15. In order to avoid recurrence of similar nature, the Registrar (Judicial) shall issue appropriate instructions to the Superintendents of different sections that cases in which orders of the Court for filing requisites are not complied with or where notices have returned unserved, should be listed without delay."

3. Thereafter, the matter was taken up on 21.09.2026 and considering the submissions of the learned counsel for the parties, the following was observed:

"1. The office note put up by the Registry indicates that neither A.D. nor unserved notice has been received back from the sole opposite party.

2. Mr. Gokulananda Parida, learned counsel submits that he has instructions to appear along with Mr. Soumya Mishra, learned counsel. They have entered appearance on behalf of opposite party by filing Vakalatnama in the Registry today. The Vakalatnama shall be taken on record.

Scanned copy be updated. The names of learned counsel Mr. Soumya Mishra, Mr. Gokulananda Parida and learned associates appearing for opposite party shall be indicated in the cause list as well as the case brief from the next listing.

3. It is submitted by Mr. Parida the learned counsel, who has entered appearance today that the order dated 03.08.2026 passed by the coordinate Bench regarding payment of cost of Rs.6,000/- has not yet been complied with. Learned counsel for the petitioner shall do the needful for compliance.

4. The matter shall be listed 'For Orders' in the week commencing 12.10.2026."

4. Learned counsel for the opposite party submits that the CMP is not maintainable as because the order rejecting the application for restoration under Order 9 Rule 9 is appealable under Order 43 Rule 1 (c) of the CPC.

5. Till date the order of this Court directing payment of cost has not been complied with.

6. In view of the above, the CMP is disposed of, the petitioner not being entitled to any of the reliefs sought for.

Copy of this order shall be forwarded to the learned Civil Judge (Sr. Division), Patnagarh to be kept in the records of C.S. No.69 of 2000.

(Mruganka Sekhar Sahoo)
Judge

Signature Not Verified
Radha
Digitally Signed
Signed by: RADHARANI JENA
Reason: Authentication
Location: OHC
Date: 31-Oct-2026 11:52:15