A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.853 of 2026
CNR No. ODHC010327592026

(In the matter of an application under Article 227 of the Constitution of India).

Bhabani Charan Rath **....** ***Petitioner (s)***

-versus-

Subrat Prasanna Mishra & Anr. **....** ***Opposite Party (s)***

Advocates appeared in this case through Hybrid Arrangement Mode**:**

For Petitioner (s) : *Mr. Amit Prasad Bose, D. Sahoo, A. Prasad, Advs.*

For Opp. Party (s) : *Mr. Rajjeet Roy, S.K. Singh, N. Hota, S. Sourav, T.P. Tripathy, A. Mohanty, S.S. Nayak, S. Das, Advs. (Caveators)*

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -28.08.2026
DATE OF JUDGMENT: -30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner, representing Defendant No. 2 in C.S. No. 1072 of 2018, has filed the present Civil Miscellaneous Petition challenging the order dated 18.04.2026 passed by the learned Civil Judge (Senior Division), Bhubaneswar, whereby his applications for setting aside the ex parte order dated 08.08.2022 and for acceptance of his written statement were rejected. The Petitioner has further sought a direction to the learned Trial Court to accept his written statement.

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I. FACTUAL MATRIX:

2. In the year 2018, Opposite Party No. 1, as Plaintiff, instituted C.S. No. 1072 of 2018 before the learned Civil Judge (Senior Division), Bhubaneswar, seeking a decree of permanent injunction restraining the Defendants from entering upon the suit schedule property and raising any construction thereon, along with such other reliefs as the Court deemed fit and proper.

3. Upon receipt of summons, Defendant No. 1, Sarmistha Rath, who is the sister of the Plaintiff, entered appearance and filed her written statement-cum-counterclaim. She contended that the Plaintiff was not in possession of the suit schedule property and, therefore, the suit for permanent injunction simpliciter was not maintainable. In her counterclaim, she sought a decree for specific performance of contract, directing the Plaintiff to execute a registered sale deed in respect of the suit property in her favour, along with costs and other consequential reliefs.

4. The Plaintiff filed his written statement to the counterclaim, denying the averments made therein. The Petitioner, who is the Managing Director of Baibhav Properties Pvt. Ltd., representing Defendant No. 2 in the suit, stated that he was frequently required to travel on account of his business engagements and was under the impression that his wife, Defendant No. 1, was effectively protecting their interests in the proceedings. Defendant No. 1 had also adduced

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evidence as D.W.1. The Petitioner was proceeded against ex parte on 08.08.2022.

5. Subsequently, on 24.01.2026, the Petitioner filed applications seeking setting aside of the *ex parte* order and acceptance of his written statement. By order dated 18.04.2026, the learned Trial Court rejected both applications, observing that the Petitioner had failed to establish sufficient cause for his non-appearance and considerable progress had already been made in the trial.

6. Aggrieved by the said order, the Petitioner approached this Court by filing the present Civil Miscellaneous Petition.

II. SUBMISSIONS OF THE PETITIONER:

7. Learned counsel for the Petitioner made the following submissions in support of his contentions:

i) Learned counsel for the Petitioner submitted that the learned Trial Court had erred in rejecting the applications seeking recall of the ex parte order dated 08.08.2022 and acceptance of the written statement filed by the Petitioner.

ii) It was submitted that the Petitioner, being the Managing Director of Baibhav Properties Pvt. Ltd., was frequently required to remain out of station on account of unavoidable business engagements. He was under the bona fide impression that his interests in the suit were being adequately protected by his wife, Defendant No. 1, who had already filed her written statement-cum-counterclaim and had also adduced evidence as D.W.1. Upon learning that he had been proceeded against

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ex parte on 08.08.2022, the Petitioner filed his written statement along with applications seeking recall of the said order and acceptance of the written statement on 24.01.2026.

iii) Learned counsel further submitted that the Trial Court had rejected the applications without giving due consideration to the substantial defences raised in the proposed written statement. It was contended that the Plaintiff was not in possession of the suit schedule property and, therefore, could not claim the benefit of the alleged mutation of the property in his favour. It was further asserted that the Plaintiff had already received the full and final consideration amount in respect of the suit property from Defendant No. 1, the Petitioner's wife. Consequently, the suit for permanent injunction was contended to be not maintainable.

iv) It was further submitted that the proposed written statement raised substantial questions concerning possession of the suit property, receipt of consideration and maintainability of the suit, which were necessary for determining the real controversy between the parties. Refusal to receive the written statement would, according to the Petitioner, deprive him of an opportunity to place his bona fide defence before the Trial Court and result in failure of justice.

v) Learned counsel contended that the Trial Court ought to have adopted a liberal approach while considering the prayer for acceptance of the written statement. Reliance was placed on the decisions of the Supreme Court in ***Usha Balashaheb Swami v. Kiran***

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Appaso Swami[1], and ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd***[2]. It was submitted that the Supreme Court had recognised that amendment of a written statement stood on a different footing from amendment of a plaint and that procedural provisions ought to be construed so as to advance substantial justice.

vi) Referring to the principles governing amendment of pleadings summarised in ***Sanjeev Builders*** **(supra)**, learned counsel submitted that delay alone ought not to defeat a prayer for amendment where the proposed pleading was necessary for effective adjudication and did not cause irreparable prejudice to the opposite party. It was further contended, relying on ***Usha Balashaheb Swami*** **(supra)**, that courts were required to adopt a more liberal approach in permitting a defendant to raise additional or alternative pleas in a written statement.

vii) Learned counsel further asserted that acceptance of the written statement would not prejudice any vested right of the Plaintiff, who would remain at liberty to file a replication, if necessary, cross-examine witnesses and adduce evidence in rebuttal. It was submitted that procedural law was intended to facilitate adjudication on merits rather than prevent a litigant from presenting a bona fide defence. Accordingly, learned counsel prayed that the impugned order dated 18.04.2026 be set aside and the Petitioner's written statement be accepted for proper adjudication of the suit.

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[1] (2007) 5 SCC 602.
[2] 2022 SCC OnLine SC 1128

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III. SUBMISSIONS OF THE OPPOSITE PARTIES:

8. Per contra, learned counsel for Opposite Parties opposed the Petitioner's prayer, contending that the Petitioner was fully aware of the proceedings, as his wife, Defendant No. 1, had already entered appearance on 27.08.2019 and was contesting the suit. It was asserted before the learned Civil Judge (Senior Division), Bhubaneswar that the Petitioner had deliberately avoided appearing and filing his written statement. It was further contended that the Plaintiff's evidence had already concluded and Defendant No. 1 had also adduced evidence as D.W.1. At such a belated stage, acceptance of the written statement and recall of the *ex parte* order would cause prejudice to the Plaintiff, delay the disposal of the suit and effectively necessitate a *de novo* trial. Accordingly, the rejection of the applications was supported.

IV. FINDING OF THE CIVIL JUDGE (SENIOR DIVISION), BHUBANESWAR:

9. The learned Civil Judge (Senior Division), Bhubaneswar, while considering the applications dated 24.01.2026 seeking setting aside of the ex parte order and acceptance of the written statement, took note of the submissions advanced by both parties. The Petitioner had submitted that, owing to the unavailability of certain relevant documents, he could not prepare and file his written statement within time and that his non-appearance was neither intentional nor deliberate. The Plaintiff opposed the applications, contending that the Petitioner was fully aware of the proceedings, being the husband of Defendant No. 1, who had entered appearance on 27.08.2019, and that

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the applications had been filed at a belated stage when the Plaintiff's evidence had already concluded.

10. The learned Civil Judge (Senior Division), Bhubaneswar observed that the Petitioner had been proceeded against *ex parte* on 08.08.2022 and that the applications seeking recall of the said order and acceptance of the written statement had been filed much after commencement of the trial. The learned Civil Judge (Senior Division), Bhubaneswar found that the Petitioner had failed to offer a plausible explanation constituting good cause for his non-appearance on the date fixed. The Court further noted that the suit had been pending since 2018 and that the evidence of P.W.1, P.W.2, P.W.3 and D.W.1 had already been recorded. Considering the substantial progress made in the trial and the likelihood of inconvenience to the Plaintiff and further delay in disposal of the suit, the learned Civil Judge (Senior Division), Bhubaneswar rejected both applications by order dated 18.04.2026.

V. COURT'S REASONING AND ANALYSIS:

11. Heard learned counsel for the parties and perused the materials available on record. The issues framed by learned counsel for the Petitioner converge into one, that is, whether the learned Civil Judge (Senior Division), Bhubaneswar was justified in refusing to recall the *ex parte* order dated 08.08.2022 and to receive the written statement of Defendant No. 2 at this stage of the suit.

12. At the threshold, this Court must remind itself that the supervisory jurisdiction under Article 227 of the Constitution, though wide in its

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reach, is restrained in its exercise. Superintendence is not appellate authority in another garb, nor does it confer a licence to substitute judicial preference for discretion lawfully exercised. The constitutional power exists not to correct every error, but to prevent justice from becoming a casualty of jurisdictional transgression, patent perversity or manifest disregard of law.

13. In ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[3], the Supreme Court, while delineating the scope of supervisory jurisdiction under Article 227 of the Constitution, observed as follows:

> *"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*
>
> *…*
>
> *c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.*
>
> *d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh [AIR 1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*

[3] (2010) 8 SCC 329.

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e) *According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".*

f) *In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.*

g) *Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.*

h) *In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised…"*

14. The Code of Civil Procedure is an instrument of justice, not an arsenal of procedural penalties, and its rules are fashioned to advance adjudication, not to defeat legitimate claims by the tyranny of technicalities. Long ago, in ***Sangram Singh v. Election Tribunal, Kotah***[4], the Supreme Court reminded courts that procedural law exists to facilitate justice, not to trip up litigants. Justice Krishna Iyer, with characteristic force, declared in ***State of Punjab v. Shamlal Murari***[5], that procedural law is not a tyrant but a servant, not an

[4] AIR 1955 SC 425
[5] (1976) 1 SCC 719

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obstruction but an aid to justice. The same judicial philosophy resonates in ***Sushil Kumar Sen v. State of Bihar***[6], where procedure was described as the handmaid, not the mistress, of legal justice. The message is unmistakable in that procedure must serve justice, never enslave it.

15. These pronouncements are not pious platitudes meant to embellish judicial discourse. They embody a living principle that must inform the exercise of judicial discretion. When a litigant seeks to place a pleading on record, the Court must look beyond the mere mechanics of procedure and examine the demands of substantial justice. Procedural discipline is undoubtedly necessary, but discipline must not degenerate into rigidity, nor should technical compliance become an altar upon which legitimate rights are sacrificed. The judicial inquiry must therefore be whether the default is deliberate, whether the stage of proceedings permits indulgence, and whether any real prejudice would be occasioned to the adversary. Justice does not demand that every procedural lapse be condoned; equally, it does not permit every lapse to be punished by shutting the doors of adjudication. The balance lies in ensuring that procedural fairness remains the pathway to justice, rather than it is a stumbling block.

16. Order IX Rule 7 CPC embodies a principle of procedural fairness, not a philosophy of judicial exclusion. It enables a defendant, against whom proceedings have been directed to continue *ex parte*, to appear at an adjourned hearing and, upon showing good cause for his

[6] (1975) 1 SCC 774

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previous absence, to be heard as if he had appeared on the day fixed for his appearance. In ***Sangram Singh*** **(supra)**, the Supreme Court drew a vital distinction between setting the clock back and permitting a litigant to join the proceedings as they stand. Good cause is necessary for the former, but not invariably for the latter, which remains subject to judicial discretion. The absence of sufficient cause may deprive the defendant of the right to reopen earlier proceedings, but does not necessarily preclude participation in the proceedings yet to unfold. An *ex parte* order may close the chapter already written, but it does not, by itself, forbid the defendant from participating in the chapters that remain. This distinction finds further affirmation in ***Arjun Singh v. Mohindra Kumar***[7], wherein the Supreme Court explained the operation of Order IX Rule 7 CPC and distinguished between an adjournment for further hearing and an adjournment merely for pronouncement of judgment. The Supreme Court clarified that where the hearing of the suit has not been concluded, a defendant may participate in the subsequent proceedings even without establishing good cause for his earlier absence, although he cannot claim the reopening of proceedings already concluded. The law thus preserves procedural discipline without converting a past default into a permanent forfeiture of the right to participate in the remaining proceedings.

17. The learned Civil Judge (Senior Division), Bhubaneswar was, therefore, required to distinguish between the prayer for restoration

[7] AIR 1964 SC 993.

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of the Petitioner to his earlier procedural position and his right to participate in the proceedings prospectively. A refusal to recall the *ex parte* order does not furnish a judicial warrant to exclude the Petitioner altogether from the subsequent proceedings. Such an approach would confuse the consequence of an earlier default with the extinction of a continuing procedural right. Order IX Rule 7 CPC is not a charter of exclusion, rather, it is a measured provision for participation, subject to the limitations imposed by the stage of the proceedings. The Petitioner does not cease to be a party merely because he failed to appear on an earlier occasion. The suit concerns the interests of Defendant No. 2, represented by the Petitioner, and the decree may affect those interests. The law may deny a litigant the privilege of retracing lost steps, but it does not deny him the right to walk the path that still lies ahead. The question whether his belated written statement may be received, however, must be separately examined under Order VIII CPC.

18. In fact, Order VIII Rule 1 CPC prescribes a period of thirty days for filing the written statement, ordinarily extendable up to ninety days. Yet, in the realm of ordinary civil litigation, this prescription is not an inflexible command admitting of no exception. In ***Kailash v. Nanhku***[8] and ***Salem Advocate Bar Association (II) v. Union of India***[9], the Supreme Court recognised that the outer limit, in suits other than commercial suits governed by the special statutory regime, is

[8] (2005) 4 SCC 480.
[9] (2005) 6 SCC 344.

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directory and not mandatory. The legislative anxiety for expedition cannot be mistaken for an intention to extinguish judicial discretion. Procedure must quicken the march of justice, not cripple its administration. Order VIII Rule 10 CPC likewise entrusts the Court with discretion as to the consequence of non-filing. The statutory scheme, therefore, does not make delay an automatic warrant for shutting out a defence. It preserves a narrow but necessary judicial discretion to receive a belated pleading where exceptional circumstances, supported by satisfactory reasons, warrant such a course in the interests of justice.

19. It is also apposite to reiterate that judicial discretion is not judicial indulgence without limits. The very decisions which preserve the power to extend time also caution against its indiscriminate exercise. In ***Atcom Technologies Ltd. v. Y.A. Chunawala & Co.***[10], the Supreme Court emphasised that the directory character of Order VIII Rule 1 CPC does not entitle a defendant to an extension of time without a convincing and cogent reasons for the delay. The burden of furnishing a satisfactory explanation becomes particularly significant where the delay is substantial. An exception cannot be permitted to swallow the rule, nor can the benevolence of procedure become a sanctuary for negligence. Reasons must justify the departure and those reasons must find expression in the judicial order. Liberality is the companion of justice; laxity is its adversary. A litigant who allows years to pass in studied indifference cannot claim restoration to an earlier procedural

[10] (2018) 6 SCC 639.

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position merely by invoking the rhetoric of substantial justice. The law must remain sensitive to genuine hardship without becoming submissive to calculated delay. For every indulgence granted to one party, there may be corresponding prejudice to another, whose legitimate expectation of an expeditious adjudication is equally entitled to judicial respect. Thus, while procedural rules must not be converted into instruments of oppression, neither may they be reduced to empty formalities at the convenience of a defaulting litigant. Justice must be compassionate without being credulous, flexible without being feeble, and firm without becoming harsh.

20. Tested on the anvil of these principles, the conduct of the Petitioner scarcely merits judicial approbation. He was proceeded against ex parte on 08.08.2022 and stirred into action only after the evidence of P.W.1, P.W.2, P.W.3 and D.W.1 had been recorded. Before the learned Civil Judge (Senior Division), Bhubaneswar, the explanation advanced was that certain relevant documents were unavailable, preventing the timely preparation and filing of the written statement. In the present proceedings, the Petitioner has additionally relied upon his business engagements and his belief that his wife was attending to the litigation. Neither explanation is particularly persuasive. A Managing Director, accustomed to the affairs of business, cannot readily plead unfamiliarity with the elementary obligations of litigation. Commercial preoccupations are no universal passport to procedural immunity. The learned Civil Judge (Senior Division), Bhubaneswar was, therefore, justified in declining to accept the

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explanation as constituting good cause for his earlier default. A litigant should not forget that judicial compassion cannot become a premium upon indifference.

21. But the fault of the litigant, however evident, does not absolve the Court of its duty to examine the justice of the consequence. The learned Civil Judge (Senior Division), Bhubaneswar based the refusal substantially upon two apprehensions, namely, inconvenience to the Plaintiff and further delay in the disposal of the suit. Both are legitimate judicial concerns but neither can they be substituted for an examination of the actual circumstances. Equally, the absence of an adequate explanation for the delay cannot be disregarded merely because the proposed defence appears relevant. The Court must examine whether there exists any exceptional circumstance justifying the reception of the written statement without unsettling the proceedings already undertaken.

22. The record discloses a circumstance of considerable significance. Defendant No. 1, the wife of the Petitioner, has already filed her written statement-cum-counterclaim, specifically disputing the Plaintiff's possession over the suit land, asserting payment of consideration and questioning the maintainability of a suit for bare injunction. She has further sought specific performance of the contract. The Plaintiff has answered the counterclaim and Defendant No. 1 has entered the witness box as D.W.1. Upon examination of the written statement-cum-counterclaim filed by Defendant No. 1 and the proposed written statement of Defendant No. 2, this Court finds that

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both pleadings substantially traverse the same factual terrain. Both refer to the registered sale deeds dated 23.08.2003, the alleged payment of ₹30,00,000/- by Defendant No. 1 to the Plaintiff on 26.10.2003, the consequent delivery of possession, the construction of boundary walls and structures over the property, and the Plaintiff's alleged lack of possession. Both also dispute the Plaintiff's entitlement to maintain a suit for permanent injunction. Although Defendant No.2 has raised certain additional preliminary objections concerning maintainability, cause of action and the Plaintiff's locus standi, these arise from the same underlying transaction and do not introduce an independent factual controversy or counterclaim. The controversy which the Petitioner seeks to articulate is, therefore, already alive in the pleadings and has entered the arena of evidence. Where the defence is already before the Court, its substantial reiteration by a co-defendant cannot, merely by reason of its belated presentation, be equated with the introduction of a wholly new contest.

23. Viewed in this perspective, the apprehension of prejudice loses much of its substance, provided the Petitioner is not permitted to reopen the stages already concluded. The Plaintiff has already had an opportunity to meet the material allegations concerning possession, consideration and maintainability through his written statement to the counterclaim filed by Defendant No. 1. The issues arising from the proposed defence substantially overlap with those already in controversy, and the evidence already recorded need not be discarded or repeated. The trial need not retrace its steps merely because the

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Petitioner is permitted to participate prospectively. What the Plaintiff may lose is the procedural advantage flowing from the silence of one defendant; what he must not lose is his substantive right to a fair and expeditious adjudication. The law protects a litigant against prejudice, not against the possibility of an adversary being heard. Nevertheless, the delay involved in the present case is substantial, and the power to accept the written statement must be exercised only upon terms ensuring that the Plaintiff is not subjected to a fresh trial or avoidable prolongation.

24. The failure of the learned Civil Judge (Senior Division), Bhubaneswar to examine whether the proposed written statement introduced any substantially new controversy and whether its reception could be accommodated without reopening the evidence already recorded, assumes material significance. The Court was required to consider not merely the length of the delay, but also the nature of the defence, the stage of the proceedings and the prejudice likely to result from permitting such defence to be placed on record. While the principles laid down in ***Atcom Technologies*** **(supra)** require strict scrutiny of prolonged delay, the present case discloses the distinguishing circumstance that the material defence sought to be introduced by Defendant No. 2 has already been substantially pleaded by Defendant No. 1 and answered by the Plaintiff. The omission to consider this circumstance, which bears directly upon the existence and extent of prejudice, goes beyond a mere difference in the exercise of judicial

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discretion and warrants consideration within the limited supervisory jurisdiction of this Court.

25. The reliance placed by the Petitioner upon ***Sanjeev Builders*** **(supra)** and ***Usha Balashaheb Swami*** **(supra)** requires a measure of distinction. Those decisions concern amendment of pleadings under Order VI Rule 17 CPC and do not directly govern the reception of a written statement after an *ex parte* order. Their principles cannot be mechanically transplanted into a different procedural setting. Yet, the larger judicial philosophy which animates them is not without relevance. The function of pleadings is to illuminate the real controversy, not to conceal it behind procedural barriers. Where the controversy is already known, the defence substantially disclosed, and the prejudice capable of being neutralised by appropriate terms, procedural discretion ought to be exercised with a sense of proportion. The Petitioner cannot claim those authorities as furnishing an unconditional right, he may nevertheless draw upon their underlying insistence that substantial justice should not be defeated by technical rigidity. Such considerations must, however, remain subject to the discipline imposed by Order VIII Rule 1 CPC and the principles laid down in ***Kailash*** **(supra)** and ***Atcom Technologies*** **(supra)**.

26. Justice, however, cannot wear a face of compassion towards one party and indifference towards the other. If the Petitioner is to be permitted to enter the contest at this advanced stage, the Plaintiff cannot be compelled to bear the burden of his unexplained neglect. The

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traditional judicial answer lies in the imposition of appropriate costs. Costs may compensate; conditions may discipline; and procedural safeguards may prevent indulgence from degenerating into delay. The Court must reconcile two legitimate claims, namely, the right of a party to place his defence before the Court and the corresponding right of his adversary to an adjudication unburdened by avoidable prolongation. Neither claim is absolute. A fair order must accommodate both without rewarding negligence or perpetuating procedural exclusion beyond what justice requires.

27. The proceedings already undertaken must consequently remain undisturbed. The Petitioner cannot demand, as a matter of right, that the trial be reopened or the witnesses already examined be recalled merely because his written statement is received. The Plaintiff's witnesses have already been examined during the course of a trial in which Defendant No. 1 has raised a substantially overlapping defence. Their evidence cannot be subjected to needless repetition to accommodate the Petitioner's belated awakening. In ***K.K. Velusamy v. N. Palanisamy***[11], the Supreme Court has explained that the power under Order XVIII Rule 17 CPC is primarily intended to enable the Court to clarify doubts arising from the evidence and is not a provision conferring an unrestricted right upon parties to recall witnesses for further examination or cross-examination. The Hon'ble Court further recognised that the inherent powers under Section 151 CPC may be exercised in appropriate cases to reopen evidence or

[11] (2011) 11 SCC 275.

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recall witnesses for further examination, subject to the limitations governing the exercise of such powers. Any exceptional necessity for recalling a witness must, therefore, be considered by the learned Civil Judge (Senior Division), Bhubaneswar strictly in accordance with Order XVIII Rule 17 CPC and Section 151 CPC, as applicable, and for reasons recorded in writing. The Petitioner must also bear reasonable costs occasioned by his default. The door of justice may be opened to the latecomer, but the clock of litigation cannot ordinarily be turned backwards at his convenience.

VI. CONCLUSION:

28. In view of the foregoing discussion, this Court is of the view that a litigant ought not to be denied a fair opportunity of presenting his defence merely because procedure has been imperfectly observed. Equally, he cannot claim a licence to disregard procedural obligations with impunity. Justice is neither a mechanical slave of technicality nor an indulgent spectator of delay. The impugned order dated 18.04.2026 rightly noticed the Petitioner's default, but did not sufficiently examine whether the proposed defence, already substantially reflected in the pleadings of Defendant No. 1, could be received without occasioning real prejudice or unsettling the trial. The error lies not in insisting upon procedural discipline, but in overlooking a material consideration bearing directly upon the exercise of discretion. Having regard to the peculiar facts and circumstances of the present case, particularly the substantial identity of the factual defence already on record and the opportunity previously afforded to

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the Plaintiff to contest the same, this Court considers that a strictly conditional opportunity may be granted without reopening the proceedings already concluded. Accordingly, in exercise of the supervisory jurisdiction under Article 227 of the Constitution, the impugned order dated 18.04.2026 is set aside and the CMP is allowed, subject to the following conditions:

a. The Petitioner, representing Defendant No.2, shall pay costs of ₹10,000/- (Rupees Ten Thousand only) to the Plaintiff/Opposite Party No. 1, or deposit the same before the learned Civil Judge (Senior Division), Bhubaneswar, within two weeks from the date of submission of copy of this judgment.

b. Upon payment or deposit of the aforesaid costs, the *ex parte* order dated 08.08.2022 shall stand recalled to the limited extent necessary to permit the Petitioner to participate in the proceedings hereafter and the written statement tendered by him shall be received on record without reopening the proceedings already concluded.

c. The evidence already recorded shall remain undisturbed. The Petitioner shall not be entitled, merely by reason of the acceptance of his written statement to recall or further cross-examine witnesses already examined. Any exceptional application seeking recall of a witness shall be considered by the learned Civil Judge (Senior Division), Bhubaneswar strictly in accordance with law and upon reasons recorded in writing.

Signature Not Verified
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Signed by: BHABAGRAHI JHANKAR
Designation: AR-CUM-SR. SECRETARY
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d. The Plaintiff shall be at liberty to file a reply to the written statement, if so advised and if permitted by the learned Civil Judge (Senior Division), Bhubaneswar, within two weeks from the date of its acceptance. The Court may frame an additional issue only if it finds that a material question arising from the pleading is not already covered by the existing issues.

e. The Petitioner may adduce his evidence at the appropriate stage of defence evidence, confined to the pleadings so received, without seeking unnecessary adjournments or reopening any completed stage of the trial.

f. Payment or deposit of costs within the stipulated period shall be a condition precedent to the benefit granted under this judgment. In default, the conditional relief granted herein shall lapse and the impugned order dated 18.04.2026 shall remain operative.

29. Regard being had to the fact that the suit is of the year 2018 and has already consumed considerable judicial time, the learned Civil Judge (Senior Division), Bhubaneswar shall make endeavour to conclude the proceedings as expeditiously as possible, preferably within six months from the date of communication of this judgment, without granting avoidable adjournments to either party.

30. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30th Oct., 2026 /

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