IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.919 of 2025

Sk. Haidar ..... ***Petitioner***

Represented by Adv. –
Salauddin Khan,
M.K. Mohapatra,
D.P. Jena, S. Sahoo

-versus-

Mamtaj Bibi & Others ..... ***Opposite Parties***

Mr. M/s. Janayatri Rout,
R. Swain, S.F. Ahmec
(O.P. No.1(a) to O.P.1(i)

M/s Tazweary Begu
Behera, R. Singh
(O.P.1(ka), 1(kha), 1(ga)
1(gha), 1(cha)

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

ORDER
09.04.2026

Order No.

05. 1. This matter is taken up through Hybrid mode.

2. Heard learned counsel for the Petitioner as well as learned counsel appearing for the Opposite Parties. Perused the CMP application as well as the prayer made therein.

3. The Plaintiff in C.S. No.531 of 2012 pending in the Court of learned 3rd Additional Senior Civil Judge, Balasore has approached

this Court by filing the present application under Article 227 of the Constitution of India thereby challenging the impugned order dated 11.04.2025.

4. Learned counsel for the Plaintiff-Petitioner at the outset contended that initially the Plaintiff filed a suit for declaration and for cancellation of sale deed. In the suit, the Defendants appeared pursuant to the notice. While the suit was pending for trial, the Defendant No.1 Sk. Nabin died on 18.02.2023 leaving behind his wife, two sons and three daughters as his legal heirs. The Plaintiff initially filed an application under Order 22 Rule 4 of CPC read with Order 1 Rule 10 of CPC on 11.08.2003. Though there was delay in approaching the Court for substitution, however, no condonation of delay application was filed along with the application for substitution. The impugned order dated 11.04.2025 reveals that vide order dated 22.02.2024, the learned trial Court observed that the said application has been filed after lapse of six months and that since the substitution petition has been filed after expiry of the prescribed period of limitation and although opportunity was granted to the Plaintiff to rectify the mistake of not filing the limitation application, no steps were taken by the Plaintiff thereto. The learned trial Court finally rejected the petition vide order dated 06.09.2024. As such, the suit abetted against Defendant No.1.

5. While this was the position, the suit proceeded further. At the time of argument the Plaintiff again filed another application under Order 22 Rule 4 of CPC on 09.04.2025 without any application for condonation of delay. Subsequently, the Plaintiff filed another application under Order 22 Rule 9 of CPC on 11.04.2025. Both this

applications were taken up for hearing by the learned trial Court and after hearing both sides, vide common order dated 11.04.2025 at Annexure-2 to the CMP application, learned trial Court rejected both the applications filed by the Plaintiff. Being aggrieved by such order, the Petitioner has approached this Court by filing the present CMP application.

6. While assailing the impugned order dated 11.04.2025, learned counsel for the Petitioner at the outset contended that although applications were filed before the learned trial Court under Order 22 Rule 4 as well as Order 22 Rule 9 of CPC to bring on record the deceased-Defendant No.1 and to set aside the abetment of the suit as against the Defendant No.1, however the same has not been considered in its proper perspective by the learned trial Court. He further contended that the learned trial Court has committed an illegality by order dated 06.09.2024, which has attained finality and that the learned trial Court has no jurisdiction to recall its own order. It is only on such ground both the applications the Petitioner has been disposed of by virtue of common impugned order.

7. In course of argument, learned counsel for the Petitioner further contended that unless the Plaintiff is permitted to substitute the legal heirs of the deceased-Defendant No.1 and unless the abetment of the suit against the Defendant No.1 and his legal heirs is set aside, the Plaintiff is likely to be seriously prejudiced. He further contended that a valuable substantive right of the Plaintiff over the property is involved in the suit. In such view of the matter, learned counsel for the Petitioner contended that merely on the basis of a technicality the right of the Plaintiff to proceed against the

Defendant No.1 and his legal heirs have been taken away. It was also contended that the learned trial Court failed to provide opportunity to the Plaintiff to rectify the mistake, if any, in the application. On such ground, learned counsel for the Petitioner contended that the impugned order dated 11.04.2025 is legally unsustainable in law and, the same is likely to affect the Plaintiff adversely. Accordingly, it was prayed that order dated 11.04.2025 be set aside and the legal heirs of deceased-Defendant No.1 be permitted to be brought on record.

8. Learned counsel appearing for the Opposite Party-Defendant Nos. 2 to 7 on the other hand objected to the prayer made in the present CMP application. Learned counsel for the Opposite Party at the outset submitted that the learned trial Court has not committed any illegality in rejecting the prayer of the Petitioner on the ground that on an earlier occasion a similar application filed by the Plaintiff was rejected by the learned trial Court. He further contended that the learned trial Court has no power to either review or recall its own order which has attained finality by the time the subsequent application was filed. He further contended that since the suit has abetted as against the Defendant No.1, the substantive right has already accrued in favour of the legal heirs of the Defendant No.1 and in the event the order dated 11.04.2025 is set-aside, such substantive right is likely to be seriously affected. He further contended that since the failure is on the part of the Plaintiff to take timely steps to bring on record the legal heirs of the Defendant No.1, the Plaintiff is bound to suffer. Moreover, the learned trial Court has followed the procedure as prescribed in the CPC. On such ground

learned counsel for the Opposite Party Nos.2 to 7 contended that the CMP application is devoid of merit and accordingly, the same should be dismissed.

9. Having heard the learned counsels appearing for both sides, on a careful examination of the background facts as well as the materials on record and filed along with the CMP application, this Court found that the Defendant No.1 to the suit died on 18.02.2023. Although thereafter an application was filed by the Plaintiff, the same was not accompanied by an application for condonation of delay. Hence, such application was rejected by the learned trial Court. Thereafter, the Plaintiff's applications under Order 22 Rule 4 as well as under Order 22 Rule 9 of CPC were taken up for hearing and by virtue of the impugned order both the applications have been rejected. As a result of such composite impugned order dated 11.04.2025, the suit was abetted as against the legal heirs of Defendant No.1.

10. On a careful analysis of the factual background of the present case, further keeping in view the larger interest of justice, this Court is of the view that the learned trial Court should have provided an opportunity to the Plaintiff to bring an application for condonation of delay before dismissing the applications. On a careful scrutiny provisions contained in Section 5 of the Limitation Act, this Court found that any appeal or any application, other than the ones filed under Order 21 of the CPC, may be admitted after the prescribed period if the Appellant or the applicant satisfies the Court that he has sufficient cause for not preferring the appeal or making the application within such period. The provision contained in Section 5

of the Limitation Act does not speak of filing of any application with regard to pending CMP application by the party should approaches the Court seeking condonation of delay. Moreover, the aforesaid provision in the shape of Section 5 of the Limitation Act has been enacted with the objective to condone the delay in an appropriate case where the Party is found to be not at fault or has justified the delay by sufficient reason. In the present case, during the pendency of the suit the Defendant No.1 died. It was the responsibility of the counsel for the Plaintiff to take steps for substitution to bring on record of the legal heirs of the Defendant No.1. Although the steps were taken by filing an application under Order 22 Rule 4 of CPC, however, the same was not accompanied by an application under Section 5 of the Limitation Act for condonation of delay. Thus, it cannot said that the Plaintiff is solely responsible for non-filing of the application and, as such, the Plaintiff alone should not be penalized. Moreover, this Court is also of the view that Section 5 of the Limitation Act does not speak of filing of an application. Instead, on such sufficient cause being shown and the Court being satisfied with regard to the cause of delay, can exercise the power to condone the delay. On perusal of the impugned order it appears that the learned trial Court has not examined the issue from that angle and the application has been rejected only on the ground of failure of the Plaintiff to file an application for condonation of delay.

11. On a careful consideration of the factual background of the present case as well as the legal position, this Court is of the considered view that although the learned trial Court has not committed any mistake in rejecting of the application of the

Petitioner, however, the learned trial Court has failed to provide an opportunity to the Plaintiff to file an application to explain the delay and approaching the Court for substitution. In the aforesaid factual background, this Court has no hesitation to set aside the impugned order dated 11.04.2025, the same is hereby set aside. However, the same is subject to the Plaintiff paying a cost of Rs.5,000/- (Rupees Five Thousand).

12. Accordingly, the CMP application stands allowed.

(Aditya Kumar Mohapatra)
Judge

Sisir

Signature Not Verified
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Signed by: SISIR KUMAR SETHI
Designation: PERSONAL ASSISTANCE
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 15-Apr-2026 20:03:53