A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P No.1746 of 2025

CNR No.-ODHC010772692025

(In the matter of an application under Article 227 of the Constitution of India, 1950)

Rajesh Kumar Agarwal **....** ***Petitioner(s)***

-versus-

Taraknath Sur & Ors. **....** ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner(s) : *Mr. Avijit Pal, Adv.*

For Opposite Party(s) : *Mr. Bibhuti Bhusan Mishra, Adv.*
Ms. Akasmika Mishra, Adv.

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-27.08.2026
DATE OF JUDGMENT:- 30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner, being Defendant No.1 in the civil suit, has instituted the present Civil Miscellaneous Petition under Article 227 of the Constitution of India, assailing the legality, propriety and correctness of the order dated 14.10.2025 passed by the learned Senior Civil Judge (Commercial Court), Cuttack, in C.S. No.112 of 2023. By the impugned order, the learned trial Court rejected the petition dated 03.07.2025 filed by the Petitioner/Defendant under Order VII Rule 11(a) and (d) of the

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Code of Civil Procedure, praying for rejection of the aforesaid suit on the grounds stated therein.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case as culled out from the records are as follows:

(i) The Petitioner/Defendant No.1, by executing a House (Shop) Rent Agreement dated 24.08.2006 with Opposite Party No.1/Plaintiff and Opposite Party Nos.2 to 4, took possession of the property belonging to the said parties as a tenant for the purpose of carrying on his commercial activities therein.

(ii) After some time, the Petitioner/Defendant No.1 caused various disturbances and committed several acts of misconduct, including inducting third parties into portions of the tenanted premises without obtaining the permission of the owners. Consequently, after service of notice under Section 106 of the Transfer of Property Act, the house owners instituted C.S. No.485 of 2011. Ultimately, by judgment dated 12.02.2021, the learned 5th Additional Civil Judge (Senior Division), Cuttack, decreed the suit and directed the defendants therein to deliver vacant possession of the suit premises to the plaintiffs within three months, failing which the plaintiffs would be at liberty to recover possession in accordance with due process of law.

(iii) Opposite Party No.1/Plaintiff filed Execution Case No.31 of 2023 only against Defendant No.1/Petitioner, as the other defendants had already left the subject premises. They were strangers to the owners and had no agreement with them.

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(iv) For reasons best known to the Plaintiff/Opposite Party No.1, no suit was filed earlier for recovery of use and occupation charges accruing each month from the Petitioner/Defendant No.1. According to the Plaintiff, after service of notice under Section 106 of the Transfer of Property Act, Defendant No.1 ceased to be a tenant and became a trespasser in respect of the leased premises. Accordingly, he became liable to pay use and occupation charges at the prevailing market rate, in view of the settled position of law relating thereto.

(v) Through his learned Advocate, Plaintiff/Opposite Party No.1 issued a demand notice by registered post on 15.05.2023, reiterating the earlier demand notice dated 16.10.2017, which had been issued to the Petitioner/Defendant No.1 through his previous learned Advocate. In the said notices, Opposite Party No.1 claimed use and occupation charges at the rate of Rs.60,000/- per month with effect from 01.10.2017. However, the Petitioner did not reply to either of the aforesaid notices.

(vi) As the matter involved a commercial dispute arising out of an agreement, Plaintiff/Opposite Party No.1 filed C.D. Case No.76 of 2023 before the District Legal Services Authority, Cuttack, seeking an amicable settlement through mediation so as to avoid prolonged civil litigation. Although Defendant No.1/Petitioner received notice from the DLSA, Cuttack, he failed to appear. Accordingly, the proceeding was treated as a non-starter on 14.07.2023.

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(vii) Since vacant possession was not delivered, Plaintiff/Opposite Party No.1 filed an execution case seeking delivery of possession through due process of law. The said execution case was pending before the learned 5th Additional Civil Judge (Senior Division), Cuttack. It was subsequently stated on behalf of Opposite Party No.1 that possession of the premises had been recovered pursuant to the order dated 10.01.2025 passed in the said execution proceeding.

(viii) In view of the aforesaid facts and circumstances, Plaintiff/Opposite Party No.1 instituted the present suit against Defendant No.1/Petitioner for recovery of use and occupation charges in respect of the premises being used for commercial purposes, along with interest at the rate of 8% per annum.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. The learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) The Petitioner/Defendant No.1 filed a written statement denying the allegations made in the plaint. Thereafter, in July 2025, the Petitioner filed an application under Order VII Rules 11(a) and 11(d) of the Code of Civil Procedure, 1908, seeking rejection of the plaint on the ground that the reliefs claimed in the suit does not constitute a "commercial dispute" as defined under Section 6 read with Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. The Plaintiff/Opposite Party No.1 has admitted in the plaint that

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the Petitioner/Defendant No.1 is a "trespasser" and that there has been no rent agreement after August 2017.

(ii) Opposite Party No.1 filed objections to the said application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908. In his objections, Opposite Party No.1 contended that the question of jurisdiction, as raised by the Petitioner, was not legally tenable at the stage of evidence.

(iii) The learned Senior Civil Judge (Commercial Court), Cuttack, without examining whether the Commercial Court had jurisdiction to entertain the suit, rejected the application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908, by order dated 14.10.2025. The impugned order, therefore, suffers from a jurisdictional defect.

(iv) An application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908, can be filed and entertained at any stage of the proceedings. However, the Commercial Court is a creature of statute, namely, the Commercial Courts Act, 2015. Unless the dispute or claim constitutes a "commercial dispute" as defined under the Commercial Courts Act, 2015, such dispute or claim cannot be entertained as a suit before the Commercial Court.

(v) The issue raised by the Petitioner concerns the jurisdiction of the Commercial Court over the subject matter of the suit, particularly whether the dispute qualifies as a "commercial dispute" so as to enable the Commercial Court to entertain the suit. A bare perusal of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, makes

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it apparent that a dispute arising out of an agreement relating to immovable property used exclusively in trade or commerce qualifies it to be a "commercial dispute" to be tried by the Commercial Court. Therefore, the issue arises herein as to whether a suit or money suit filed against a trespasser is maintainable before the Commercial Court. The learned Senior Civil Judge (Commercial Court), Cuttack, therefore, misdirected himself in rejecting the application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908.

(vi) The definition of "commercial dispute" provides a special procedure for a specific class of litigation, and the prescribed procedure must be strictly followed before entertaining a dispute under that jurisdiction. However, litigation falling outside the definition of a "commercial dispute" cannot be left without a remedy. Such excluded disputes may be entertained by the ordinary Civil Courts, where the aggrieved party may pursue its available remedies.

(vii) The Petitioner further submitted that, following termination of the tenancy, no contractual relationship subsisted between the parties and the claim for mesne profits against a trespasser was in the nature of a claim in tort, which could not be adjudicated by the Commercial Court. It was also contended that the claim was barred by limitation, as the tenancy had ceased in 2017, whereas the subsequent demand notice was issued only on 15.05.2023. In support of his submissions, the Petitioner relied upon the

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decision of the Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP***[1], and the decision of the Calcutta High Court in ***Ladymoon Towers Pvt. Ltd. v. Mahendra Investment Advisers Pvt. Ltd***[2].

(viii) In view of the foregoing, the Petitioner prayed that this Court may be pleased to set aside the impugned order dated 14.10.2025 passed by the learned Senior Civil Judge (Commercial Court), Cuttack, in C.S. No.(III)-112 of 2023 and reject the plaint.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NO.1:

4. Per contra, the learned counsel for Opposite Party No.1 submitted that the present CMP deserves to be rejected in limine. The following submissions were made:

(i) It was submitted that, while considering an application under Order VII Rule 11 CPC, the Court was required to examine the averments in the plaint as a whole, along with the documents relied upon by the Plaintiff, without taking into consideration the defence raised by the Defendant. Reliance was placed on the decisions of the Supreme Court in ***R.K. Roja v. U.S. Rayudu & Anr.***[3], and ***Keshav Sood v. Kirti Pradeep Sood & Ors***[4].

(ii) Learned counsel further submitted that Defendant No.1 had filed his written statement, contested the amendment application and cross-examined the Plaintiff/P.W.1. Thereafter, when the suit was

[1] (2020) 15 SCC 585.
[2] 2021 SCC OnLine Cal 2082.
[3] (2016) 14 SCC 275.
[4] Civil Appeal No. 5841 of 2023.

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posted for the evidence of Defendant No.1, he filed the application under Order VII Rule 11 CPC instead of adducing evidence. It was contended that the application had been filed at a belated stage with a view to prolonging the proceedings.

(iii) It was contended that the Petitioner had sought to question the jurisdiction of the Commercial Court merely by relying upon the expression "trespasser" appearing in paragraph 4 of the plaint, without considering the plaint in its entirety. The Plaintiff had specifically pleaded that Defendant No.1 entered into possession of the suit premises pursuant to the House (Shop) Rent Agreement dated 24.08.2006 and used the premises exclusively for commercial purposes. The subsequent termination of the tenancy did not, by itself, alter the commercial character of the dispute.

(iv) Learned counsel submitted that, upon determination of the tenancy, Defendant No.1 continued in occupation of the premises without the consent of the Plaintiff and was therefore a tenant at sufferance. The claim for mesne profits or use and occupation charges arose directly from the original tenancy agreement and the continued occupation of the premises thereafter. Consequently, the dispute fell within the ambit of Section 2(1)(c)(vii) read with Explanation (a) to Section 2(1)(c) of the Commercial Courts Act, 2015.

(v) In support of the aforesaid contention, reliance was placed on the decision of the Delhi High Court in ***Jagmohan Behl v. State Bank***

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of Indore[5], wherein it was held that claims relating to rent, mesne profits and other reliefs arising out of agreements concerning immovable property used exclusively in the parlance of trade or commerce and that does constitute commercial disputes. Learned counsel further relied upon the decision of the Supreme Court in ***Ambalal Sarabhai*** (supra), to contend that the statutory requirement of exclusive commercial use stood satisfied in the present case.

(vi) It was further submitted that the commercial use of the premises was evident from the plaint and had also been recorded in the judgment dated 12.02.2021 passed in C.S. No.485 of 2011, wherein it was noticed that Defendant No.1 had taken the premises for carrying on his textile, readymade-garment and wholesale business. The Plaintiff had subsequently instituted Execution Case No.31 of 2023 for recovery of possession and had recovered possession pursuant to the order dated 10.01.2025. The claim for use and occupation charges was accordingly confined to the period preceding eviction.

(vii) Learned counsel also submitted that the Plaintiff had initiated pre-institution mediation proceedings before the District Legal Services Authority, Cuttack, in C.D. Case No.76 of 2023, which were closed as a non-starter on 14.07.2023 owing to the non-appearance of Defendant No.1. It was contended that the Petitioner had participated in the subsequent suit proceedings

[5] 2017 SCC Online Del 10706.

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without raising the present objection until the stage of defence evidence. Accordingly, learned counsel submitted that the learned trial Court had rightly rejected the application under Order VII Rule 11 CPC and that the impugned order did not warrant interference by this Court.

IV. FINDING OF THE LEARNED TRIAL COURT:

5. On perusal of the petition, the case records and other relevant documents, the learned trial Court observed that Defendant No.1 had entered into a house rent agreement dated 24.08.2006 with the Plaintiff and pro forma Defendant Nos.2 to 4, pursuant to which Defendant No.1 took possession of the property belonging to the said parties as a tenant for its commercial use. It was further observed that, although the other defendants had vacated the suit premises, Defendant No.1 continued to occupy the premises even after the expiry of the agreement. Consequently, the Plaintiff/Opposite Party No.1 instituted the suit claiming charges for the use and occupation of the premises by Defendant No.1 for commercial purposes.

6. Upon consideration of the pleadings and documents on record, the learned trial Court found that the suit premises had been let out exclusively for commercial purposes. The dispute concerned the recovery of rent and compensation for the use and occupation of the premises arising out of a commercial tenancy. The mere expiry of the agreement period did not alter the nature of the dispute.

7. Upon considering the decision in ***Ambalal*** **(supra)** and the decision of the Delhi High Court in ***Ambience Developers & Infrastructure Private***

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Limited v. Surindra Billtake Private Limited[6], the learned trial Court held that disputes relating to rent or the occupation of premises used exclusively for commercial purposes constituted commercial disputes within the meaning of the Commercial Courts Act, 2015.

8. In view of the above, the learned trial Court held that the present suit, being related to commercial premises and satisfying the pecuniary threshold prescribed under the Commercial Courts Act, 2015, was maintainable before the Court. The learned trial Court further found that the plaint disclosed a valid cause of action. Accordingly, by order dated 14.10.2025, the learned trial Court rejected the petition filed by the Petitioner/Defendant No.1 under Order VII Rule 11 of the Code of Civil Procedure, which order is impugned herein.

V. COURT'S REASONING AND ANALYSIS:

9. Heard learned counsel for the Petitioner and learned counsel for Opposite Party No.1. Perused the impugned order dated 14.10.2025, the plaint and the documents on record.

10. The jurisdiction of this Court under Article 227 is supervisory. It is meant to keep subordinate courts within the bounds of their authority. It does not exist to correct every error of fact or law. Interference is warranted where the subordinate court has assumed a jurisdiction it does not possess, has failed to exercise a jurisdiction vested in it, or has reached a conclusion so perverse that no reasonable person could have arrived at it. The impugned order has to be tested on that touchstone.

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[6] 2017 SCC OnLine Dell 11831.

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11. An application under Order VII Rule 11 may be presented at any stage of the suit, before registration of the plaint or at any time before the conclusion of the trial. Learned counsel for Opposite Party No.1 does not dispute this proposition. He submitted, relying on the decision of a co-ordinate Bench in ***UCO Bank, Rourkela Branch v. Purnima Agarwal & Ors***.[7], that the provision should not be permitted to become an instrument of delay.

12. Both positions require consideration. The Petitioner filed his written statement, contested the amendment petition, cross-examined P.W.1 and took time to lead his own evidence. It was only thereafter that he raised an objection to the jurisdiction of the Commercial Court, relying principally upon the description of him as a "trespasser" in paragraph 4 of the plaint. A court is entitled to view such a petition with circumspection. At the same time, an objection to the competence of a court over the subject matter goes to the root of the matter. A decree passed by a court lacking such competence is a nullity, and the defect cannot be cured by consent, waiver or acquiescence.

13. Delay in raising the objection cannot, therefore, by itself shut the door on it. This Court accordingly examines the objection on its merits, notwithstanding the stage at which it has been raised.

14. Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 brings within the definition of "commercial dispute" a dispute arising out of "agreements relating to immovable property used exclusively in trade

[7] CRP No. 15 of 2022.

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or commerce". Explanation (a) to Section 2(1)(c) provides that a commercial dispute shall not cease to be one merely because it also involves an action for recovery of immovable property, or for realisation of monies out of immovable property given as security, or involves any other relief pertaining to immovable property. Two conditions must therefore be met. First, the dispute must arise out of an agreement relating to immovable property. Secondly, the property must be used exclusively in trade or commerce. On the second condition, the Supreme Court in ***Ambalal Sarabhai*** (supra), held that the immovable property must be "used exclusively" or "being used exclusively" in trade or commerce; a mere possibility of future commercial use will not suffice.

15. At the stage of Order VII Rule 11, the Court looks only at the averments in the plaint and the documents filed with it. The defence and the documents of the Defendant are irrelevant. The plaint must be read as a whole and in a meaningful way. A word or sentence cannot be lifted out of its setting and made to carry a meaning the pleading as a whole does not bear.

16. Read in that manner, the plaint tells a single, connected story. The Petitioner was inducted as a tenant under the House (Shop) Rent Agreement dated 24.08.2006 for carrying on commercial activity. The tenancy was determined by notice under Section 106 of the Transfer of Property Act. C.S. No.485 of 2011 was decreed on 12.02.2021 for delivery of vacant possession. Execution Case No.31 of 2023 followed. Demand notices dated 16.10.2017 and 15.05.2023 claimed use and

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occupation charges at Rs.60,000/- per month from 01.10.2017. The present suit seeks recovery of use and occupation charges, with interest, for the period during which the Petitioner continued in occupation. Every step in this narrative traces back to the agreement of 24.08.2006.

17. The Petitioner's occupation began under that agreement and continued only because he did not surrender possession when it came to an end. Section 108(q) of the Transfer of Property Act casts on the lessee, on determination of the lease, a duty to put the lessor into possession of the property. A tenant who stays on after determination, without the assent of the landlord, becomes a tenant at sufferance. He is liable to compensate the landlord for use and occupation, usually measured at the prevailing market rate, from the date of determination until possession is restored. The claim for use and occupation charges is the monetary consequence of the lessee's failure to honour that obligation. It arises from the original tenancy agreement, and the words "arising out of" in Section 2(1)(c)(vii) are sufficiently wide to encompass such a claim.

18. The learned trial Court also drew support from the decision of the Delhi High Court in ***Ambience Developers (supra)***. However, the question must be determined with reference to the statutory provisions and the principles laid down by the Supreme Court. The Supreme Court in ***Ambalal Sarabhai*** **(supra)** emphasised that the immovable property must be used exclusively in trade or commerce for the dispute to fall within Section 2(1)(c)(vii) of the Act. In the

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present case, the claim for use and occupation charges arises from the continued occupation of premises originally taken on rent and used exclusively for commercial purposes. The termination of the tenancy does not, by itself, sever the connection between the claim and the original commercial agreement.

19. The Petitioner's case rests principally on the description of him as a "trespasser" in paragraph 4 of the plaint. That word cannot bear the weight placed on it. In the same plaint, the Plaintiff pleads the tenancy, its commercial purpose, its determination, the decree for eviction and the execution proceeding. Read against those averments, the word describes the Petitioner's status after the lease ended. It says nothing about how he came into possession. In law, a lessee who continues in possession after determination of the lease, without the landlord's assent, is a tenant at sufferance. Courts and litigants often call such a person an unauthorised occupant, and sometimes a trespasser. The substance of the pleading governs, and the label must yield to it.

20. There is a further reason to reject the Petitioner's reading. If it were accepted, a dispute over commercial premises would lose its commercial character upon termination of the tenancy, when the tenant refuses to leave. The landlord seeking rent during the lease would go before the Commercial Court, while the same landlord seeking compensation for the months after termination would be driven to the ordinary civil court, though the premises, the parties and the agreement remain the same. The Act aims at the speedy resolution of disputes of commercial value. Explanation (a) reflects a legislative

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intent to keep such disputes within the Act even when they involve recovery of the property itself. An interpretation that splits one relationship into two forums would defeat that purpose.

21. The second condition is also met on the face of the plaint. Paragraph 8 pleads that the premises were let out for commercial purposes. The judgment in C.S. No.485 of 2011, relied upon by the Plaintiff, records that the Petitioner took the premises to carry on his textile, readymade-garment and wholesale business. The Petitioner has not contended in this petition that the premises were put to any non-commercial use. His challenge is principally confined to the "trespasser" argument. The requirement of exclusive commercial use laid down in ***Ambalal Sarabhai*** **(supra)** is therefore satisfied on the averments in the plaint.

22. The learned trial Court also found that the specified value of the suit meets the threshold prescribed under the Commercial Courts Act, 2015. That finding has not been assailed. One further circumstance may be noticed, though this Court does not rest its conclusion on it. Before instituting the suit, the Plaintiff approached the District Legal Services Authority, Cuttack, in C.D. Case No.76 of 2023 for pre-institution mediation, the course contemplated by Section 12A of the Act for commercial disputes. The Petitioner received notice and chose not to appear. The proceeding was closed as a non-starter on 14.07.2023. Jurisdiction does not depend on the conduct of parties, but this history shows that the commercial character of the dispute was

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asserted from the outset and was not questioned until the suit reached the stage of defence evidence.

23. Even if the Petitioner's argument on the nature of the dispute were accepted, the relief sought would require consideration in the light of Order VII Rules 10 and 11 CPC. Clause (a) of Order VII Rule 11 applies where the plaint does not disclose a cause of action. The plaint here discloses a cause of action for recovery of use and occupation charges. Whether the claim should be tried by the Commercial Court or by an ordinary civil court is a distinct question from whether the plaint discloses a cause of action.

24. Clause (d) applies where the suit appears from the statements in the plaint to be barred by any law. An objection that a particular court lacks jurisdiction to entertain a suit may also require consideration of Order VII Rule 10, which provides for return of the plaint for presentation to the proper court. However, in the present case, the plaint discloses a dispute arising out of an agreement relating to immovable property used exclusively for commercial purposes. Consequently, the objection raised by the Petitioner does not establish any ground for rejection of the plaint under Order VII Rule 11(a) or (d) CPC.

25. The Petitioner has also contended that the claim is barred by limitation, as the tenancy was determined in 2017, whereas the subsequent demand notice was issued on 15.05.2023. However, the mere determination of the tenancy in 2017 does not, by itself, establish that the entire claim for use and occupation charges is barred by

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limitation. Whether the claim, or any part thereof, is barred would depend upon the period for which such charges are claimed, the accrual of the relevant cause of action and the applicable provisions of the Limitation Act, 1963. In the absence of a clear bar apparent from the plaint itself, the said objection does not warrant rejection of the plaint at this stage. The question of limitation, insofar as it arises, is left open for consideration by the learned trial Court in accordance with law.

26. The learned trial Court read the plaint along with the documents relied upon by the Plaintiff. It found that the premises were let out exclusively for commercial purposes, that the claim concerned compensation for use and occupation arising out of a commercial tenancy, and that the expiry of the agreement did not change the nature of the dispute. It applied the law laid down in ***Ambalal Sarabhai*** **(supra)** and held the suit to be maintainable before the Commercial Court. The impugned order discloses no want of jurisdiction, no failure to exercise jurisdiction and no perversity. There is no ground for interference under Article 227.

VI. CONCLUSION

27. For the reasons stated above, the CMP, being devoid of merit, is **dismissed**. The order dated 14.10.2025 passed by the learned Senior Civil Judge (Commercial Court), Cuttack, in C.S. No.112 of 2023 is affirmed. The observations made in this judgment are confined to the disposal of the petition under Order VII Rule 11 of the Code. They shall not influence the learned trial Court in deciding the suit on the

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evidence. As the suit has reached the stage of defence evidence, the learned trial Court shall proceed with it and endeavour to dispose of it expeditiously in accordance with law. No order as to costs.

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

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30th October, 2026/

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