IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1821 of 2026
CNR No. ODHC010797912026

Ashalata Nayak **.....** ***Petitioner***

Represented by Adv. -
Sudhansu Sekhar Jena

-versus-

Bhagaban Mohapatra & Ors. **.....** ***Opposite Parties***

Represented by Adv. -

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
10.11.2026

Order No.

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

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

3. By filing the present application under Article 227 of the Constitution of India, the Plaintiff in C.S. No.947 of 2022, pending before the learned Senior Civil Judge, Bhubaneswar, has approached this Court challenging the order dated 04.05.2022 passed in I.A. No.947 of 2022, arising out of an application filed by the Plaintiff under Order 39 Rules 1 and 2 read with Rule 3 of the CPC. By virtue of the impugned order, the learned Trial Court, while rejecting the Plaintiff's prayer for dispensing with prior notice under Order 39 Rule 3 of the CPC, issued notice to the Defendants on the application filed under Order 39 Rules 1 and 2 of the CPC.

4. Learned counsel for the Petitioner at the outset contended that although there is urgency in the matter and the defendants are

continuing with the construction, the learned trial court has not taken up the application under Order 39 Rule 1 & 2 of the CPC which is pending since 2022. He further contended that the delay in disposal of the application under Order 39 Rule 1 & 2 is solely attributable to the failure of service of notice on the defendants. He further contended that the plaintiff has already filed an application for service of the notice through alternative mode like paper publication, however such application for permitting the plaintiff to take notice by alternative mode has also not been taken up by the learned trial court. In the aforesaid factual backdrop, learned counsel for the plaintiff submitted that the plaintiff is apprehending irreparable loss to the suit scheduled property as the defendants are continuing with the construction work.

5. Considering the submissions made by the learned counsel appearing for the Petitioner, on a careful examination of the background facts and further on a close scrutiny of the impugned order dated 04.05.2022, this Court deems it proper to dispose of the present CMP application by directing the learned trial court to expedite the hearing of the application under Order 39 Rule 1 & 2 of the CPC. It is further directed that such application, if pending, shall be considered and disposed of as expeditiously as possible, preferably within a period of eight weeks from today. It is further made clear that in the event any application has been filed by the plaintiff seeking permission to take notice on the defendants through alternative mode, the same shall be considered and disposed of as expeditiously as possible preferably within two weeks from today. The learned trial court shall do well to consider and dispose of the application after providing due opportunity to both sides to put forth their case.

6. At this juncture, learned counsel for the Petitioner further brought it to the notice of the Court that he has also filed an application under Order 6 Rule 17 of the CPC. In the event any such application is still pending for consideration, the same shall also be considered and disposed of by the learned trial court after following due formalities as expeditiously as possible, preferably within the aforesaid time.

7. With the aforesaid observations and directions, the CMP stands disposed of.

(A.K. Mohapatra)
Judge

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