IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1837 of 2026
CNR No. ODHC010833402026

Bhabani Shankar @ Bhabani Sankar Nanda ..... ***Petitioner***

Represented by Adv. - Anupam Dash

-versus-

Bideshi Giri and others ..... ***Opposite Parties***

Represented by Adv. -

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

ORDER
27.10.2026

Order No.

01. ***I.A. No.2081 of 2026***

1. This matter is taken up through Hybrid mode.

2. This I.A. has been filed by the Petitioner with a prayer to dispense with the certified copies under Annexures-2, 4 & 5.

3. Heard.

4. Considering the prayer made by the learned counsel for the Petitioner and the ground stated in the application, the filing of the certified copies of the documents at Annexures-2, 4 & 5 is dispensed with for the time being.

5. Accordingly, the I.A. stands disposed of.

CMP No.1837 of 2026

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

7. By filing the present application under Article 227 of the Constitution of India, the defendant in C.S. No.73 of 2016, which was decreed *ex-parte* by virtue of the judgment of the learned Civil Judge (Senior Division), Rairangpur, has approached this Court challenging the order dated 09.09.2025, at Annexure-4, passed in Execution Case No.13 of 2023 by the learned Civil Judge (Senior Division), Rairangpur, whereby the application of the Petitioner filed under Order-41, Rule-5 of the CPC has been rejected.

8. Learned counsel for the Petitioner, at the outset, contended that the Opposite Parties, as plaintiffs, filed a suit for declaration and consequential reliefs, which was decreed *ex-parte*. Thereafter, the Petitioner approached this Court filing CMP No.1616 of 2026 challenging the order dated 09.09.2025. The said CMP was withdrawn by the Petitioner with liberty to approach the Appellate forum by filing an appeal against the judgment and decree passed in the above noted suit.

9. Learned counsel for the Petitioner further contended that after withdrawal of the previous CMP application, the Petitioner preferred an appeal bearing FRA No.20 of 2025 which is pending before the Addl. District Judge, Rairangpur for final hearing. Learned counsel for the Petitioner further contended that the Respondents have already appeared and the appeal has been posted for final hearing. He further contended that although there was a delay of nine hundred and odd days in presenting the above noted appeal, such delay has been condoned subject to payment of cost. Learned counsel for the Petitioner, at this juncture, contended that the Petitioner has already deposited the cost and the appeal has been admitted in the meantime.

10. Learned counsel for the Petitioner further contended that though the appeal preferred at the instance of the Petitioner is pending for final adjudication, in the meantime the learned Executing Court has proceeded in the pending execution case and the *ex-parte* decree passed by the learned trial Court directing demolition of the house constructed by the defendant. Apprehending demolition of his property before adjudication of the appeal, the Petitioner moved an application under Order-41, Rule-5 of CPC before the learned First Appellate Cout in the pending appeal. Such application having been rejected by virtue of the impugned order dated 01.10.2026, at Annexure-10, the Petitioner has approached this Court by filing the present CMP application.

11. On perusal of the impugned order dated 01.10.2026 at Annexure-10, this Court observes that the learned First Appellate Court, while considering the application of the Appellant-Petitioner under Order-41, Rule-5 of CPC, has taken note of the entire factual background of the present case. The Court has also referred to the condonation of delay application in presenting the appeal at the instance of the Petitioner and, such application has been admitted after condoning the delay subject to payment of a cost of Rs.8,000/-. However, finally the learned First Appellate Court, referring to the conduct of the Petitioner in withdrawing the previous I.A. application with a prayer for stay of the execution proceeding and subsequently filing another application, has come to a conclusion that the Petitioner was not diligent enough and that there is no urgency for passing any interim order. The learned Appellate Court has also held that the Petitioner-Appellant has failed to show any urgency or immediate danger likely to be caused to him. On such ground, the prayer of the Petitioner seeking stay of further

proceeding in the execution case has been rejected by the learned First Appellate Court.

12. On perusal of the impugned order, it appears that the plaintiff suit has been decreed and a decree has been passed to demolish the house constructed under the Indira Awas Yojana by the defendants and to hand-over the vacant possession to the plaintiffs. Such decree is admittedly an *ex-parte* decree. The defendants have already preferred an appeal, wherein the delay has been condoned and the appeal has been admitted and the same is posted for final hearing. At this stage, if the defendants are not protected, they are likely to be seriously prejudiced and, needless to mention here, irreparable loss is likely to be caused to the defendants by way of demolition of their property. It is true that once a decree is passed the same is to be executed as expeditiously as possible, as held by the Hon'ble Supreme Court in many recent judgments. In the present case, the factual scenario is little different where a decree has been passed *ex-parte* and the appeal preferred at the instance of the defendants has already been admitted after condoning the delay in filing of such appeal.

13. In the aforesaid factual backdrop, further taking into consideration the injury likely to be caused to the defendants in the event the execution case is allowed to proceed before the appeal preferred by the defendants challenging the *ex-parte* decree is considered and finally disposed of, this Court deems it proper to dispose of the present CMP application at the stage of admission by directing the First Appellate Court to make every endeavour for early disposal of the appeal. Such appeal be disposed of after providing opportunity to all concerned and every endeavour shall be made to dispose of such appeal within a period of three months from

today. It is further directed that till disposal of the appeal, the execution proceeding shall continue, however, no coercive action shall be taken against the defendants for a period of three months or till disposal of the appeal, whichever is earlier. Since this order is being passed without issuing notice to the plaintiffs, this Court grants liberty to the plaintiff-Opposite Parties to seek for variation or modification of this order in the event it is found that the Petitioner has suppressed any material fact or misled the Court on any factual aspect.

14. With the aforesaid observation/direction, the CMP application stands disposed of.

(Aditya Kumar Mohapatra)
Judge

S.K. Rout

Signature Not Verified
Digitally Signed
Signed by: SANTANU KUMAR ROUT
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 28-Oct-2026 17:52:52