IN THE HIGH COURT OF ORISSA AT CUTTACK

CMAPL No. 147 of 2026
ODHC010844792026

Satyajit Sahu .... ***Petitioner***

Mr. Surya Prasad Misra, Senior Advocate
assisted by Mr. Anshuman Ray, Advocate

-versus-

State of Odisha and others .... ***Opposite Parties***

Mr. Kailash Chandra Kar, Government Advocate
Mr. Amit Prasad Bose, Advocate for OP No.5
Mr. Arun Kumar Patra, Advocate for OP No.6

CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR JUSTICE MURAHARI SRI RAMAN

ORDER
29.10.2026

Order No.

01. **1.** This is an application for restoration of the writ petition being W.P.(C) No.18219 of 2026, which was dismissed for default on 27th October, 2026. It is averred in the instant application that the counsel appearing for the petitioner could not attend the Court on the said date and when the matter was called on, in view of the non-representation of the petitioner, the same was dismissed by the Court.

2. Mr. Amit Prasad Bose, learned counsel appearing on behalf of the opposite party No.5 vehemently opposes the prayer for restoration and files an objection to the same. It is averred in the said objection that since the order dated 27th October, 2026 was passed by the Bench comprising of Hon'ble the Chief Justice and Hon'ble Justice Gourishankar Satapathy, this Bench should not take up the matter for restoration.

3. Taking the said plea first, we are unable to countenance the perception prevalent at the Bar in this regard. The Bench in *seisin* of the roster if dismisses the matter for default, there is no impediment on the part of the Bench having the roster to entertain the application for restoration of the proceedings. The concept is fortified from the provisions contained under Order 9, Rule 9 of the Code of Civil Procedure, 1908 and, therefore, a distinction has to be drawn when an application seeking clarification/ modification/ review and a contempt is taken out, which requires to be dealt with by the Bench, who passes the order. The Chief Justice has also passed an Administrative order vide Notification No.577, dated 8th May, 2025 issued by Registrar (Judicial) of this Court restricting those categories of applications to be dealt with by the respective Bench and restoration application stands on a different footing. The said

application is decided only on the premise whether the petitioner was prevented by sufficient cause in not appearing on the date when the said matter was called on and dismissed for default.

4. It is a cardinal principle of law that the Court will restrict its scrutiny on the said fateful day and will not be swayed by the past conduct. It is equally important that once the litigant has engaged a lawyer and reposed confidence thereupon that he would appear as and when the matter is called on by the Bench and will protect the interest of such litigant, any lapses or default on the part of the advocate shall not act as a deterrent nor should cause a greater prejudice to the litigant.

5. We, thus, do not find that there is any hindrance on the part of this Bench in dealing with an application for restoration and, therefore, the objection taken by the contesting opposite party in this regard is refused.

6. A further plea is taken that although a lawyer and/or a legal professional may not be able to attend the Court physically for some unavoidable circumstances, because of the adoption of the technology, he could have appeared through Virtual Mode.

We are unable to accept the said stand taken by the contesting opposite party. Once there is an inhibition on the part of the counsel for the reason which is reasonable and constitutes sufficient cause, mere adoption of the technology does not appear to be a reasonable objection. Once the counsel has said that he was prevented by sufficient cause in not appearing on the said date, it imbibes within itself both the physical appearance as well as the virtual appearance. What is important is the hindrance caused because of the competing circumstances in not appearing in the matter and, therefore, the stand taken by the contesting opposite party that he could have appeared on Virtual Mode is not sustainable and/or acceptable.

7. A further stand is taken that the moment the petitioner can come on the very next date to affirm an affidavit, then what prevented him from appearing in the matter.

The aforesaid stand appears to be misplaced for the simple reason that the default has not occurred because of the non-appearance of the petitioner but because of the non-representation of the petitioner. Once the counsel was prevented by sufficient cause in not appearing on the day when the matter was called on and

dismissed for default, even if the petitioner was otherwise available and may embark a journey of a shorter distance, the entrustment upon the lawyer to represent him in the case is different from the said aspect. Once the lawyer could not appear on the day when the matter was taken up and dismissed for default, the readiness and willingness and/or vigilance in the matter at the behest of the petitioner is impliedly inferred. It cannot be said that the petitioner was non-diligent nor careful in pursuing his remedy and it is only for the default of the lawyer who could not appear on the said fateful day, when the matter was dismissed for default. We, thus, do not find such stand as tenable in eye of law.

8. Taking the overall view on the objections so raised by the contesting opposite parties, we do not find that the petitioner can be said to be careless and negligent in pursuing his remedy.

9. The reasons assigned in the application constitute sufficient cause and, therefore, the said application is allowed.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

Signature Not Verified
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Signed by: SUMANTA BEHERA
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 02-Nov-2026 17:02:03

S. Behera