IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1986 of 2026
CNR No. ODHC010850942026

Pitabas Jena and others **.....** ***Petitioners***

Represented by Adv. -
Manoj Kumar Pati

-versus-

Raula Baliarsingh and others **.....** ***Opposite Parties***

Represented by Adv. -

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
12.11.2026

Order No.

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

2. Heard learned counsel for the Petitioners. 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 defendant Nos.1(e), 1(f), 1(g), 1(h) & 3 in C.S. No.429 of 2011 pending before the learned 1st Additional Senior Civil Judge, Puri have approached this Court challenging the impugned order dated 24.06.2026 at Annexure-4 to the CMP application.

4. Learned counsel for the Petitioners, at the outset, contended that the Opposite Parties, as plaintiffs, filed the suit for partition and declaration of the sale-deed to be null and void. He further contended that in the suit, after summons were issued, the defendants appeared. He further contended that so far the defendant No.1(b) is concerned, he only appeared in the suit initially, but did

not appear later on. Therefore, defendant No.1(b) was set ex-parte. Learned counsel for the defendant Nos. 1(e), 1(f), 1(g), 1(h) & 3 further contended that on a later date the defendant No.1(b) appeared before the learned trial Court and filed an application under Order 9, Rule 7 of CPC for setting aside the ex-parte order and to permit the Petitioner to participation in the suit. The present defendants filed their objection to such application filed by the defendant No.1(b) seeking setting aside of the ex-parte order.

5. Learned counsel for the Petitioner, at the outset, contended that although the defendant No.1(b) has filed an application with the prayer for setting aside the ex-parte order under Order 9, Rule 7 of CPC, however, such order setting the defendant No.1(b) ex-parte could be set aside upon the defendant No.1(b) showing good grounds and sufficient cause for his non-appearance before the Court. He further contended that the defendant No.1(b) filed such application ten years after he was summoned to appear before the Court and to file his W.S. Learned counsel for the Petitioner, while assailing the impugned order dated 24.06.2026, submitted before this Court that the learned trial Court has mechanically allowed the application of the defendant No.1(b) and the order setting him ex-parte has been set aside mechanically without assigning any sufficient cause or good reason. In the aforesaid context, learned counsel for the Petitioner drew the attention of this Court to the impugned order dated 24.06.2026, at Annexure-4 to the CMP application.

6. On a careful analysis of the submissions made by the learned counsel for the Petitioner, further on a close scrutiny of the impugned order dated 24.06.2026, this Court found that the learned

trial Court, while considering the application of the defendant No.1(b) dated 08.04.2026 under Order 9, Rule 7 of CPC, has also taken note of the objection of the defendant Nos. 1(e), 1(f), 1(g), 1(h) & 3. It appears that the Petitioner-defendants objected to the application of the defendant No.1(b) under Order 9, Rule 7 of CPC. A specific objection was taken with regard to the fact that no sufficient ground has been shown to condone the delay in filing the application under Order 9, Rule 7 of CPC. The learned trial Court, while considering such application of the defendant No.1(b) and allowing the same by virtue of the impugned order dated 24.06.2026, has passed a cryptic order without even discussing the grounds taken by the defendant No.1(b) and the specific objection by the defendant Nos. 1(e), 1(f), 1(g), 1(h) & 3.

7. In the present context, this Court would like to refer to the provision contained in Order 9, Rule 7 of CPC which provides that where the defendant appears on or before the day of adjourned hearing and assigns good cause for previous non-appearance, the learned trial Court may, upon imposition of cost or otherwise, permit the defendant (defendant No.1(b) in the present instance) to be heard in answer to the suit as if he had appeared on the date fixed for his appearance. In the present case, neither any reason has been given while condoning delay of ten years, as has been indicated in the impugned order, nor has any good cause been shown or discussed in the impugned order. On a perusal of the impugned order dated 24.06.2026, this Court is of the view that the learned 1st Additional Senior Civil Judge, Puri has mechanically passed order date 24.06.2026 without considering the specific objection of the defendant Nos. 1(e), 1(f), 1(g), 1(h) & 3 as well as without following

the provision contained in Order 9, Rule 7 of CPC. In such factual scenario, this Court is of the view that the impugned order dated 24.06.2026 is unsustainable in law. Accordingly, the same is hereby set aside.

8. Further, the matter is remanded back to the learned trial Court to reconsider the application of the defendant No.1(b) dated 08.04.2026 filed under Order 9, Rule 7 of CPC after taking into consideration the objections of the defendant Nos. 1(e), 1(f), 1(g), 1(h) & 3. Further, the learned trial Court is directed to analyse the good cause shown by the defendant No.1(b) for setting aside the ex-parte order and upon recording of such satisfaction the learned trial Court may pass necessary consequential orders in terms of Order 9, Rule 7 of the CPC. Let such application be disposed of within a period of eight weeks on production of a certified copy of today's order by the Petitioner-defendant Nos. 1(e), 1(f), 1(g), 1(h) & 3.

9. Since this order is being passed in the absence of the Opposite Parties, without issuing notice to them, liberty is granted to the Opposite Parties to seek for variation/modification/recall of the order in the event it is found that the Petitioners have either misled this Court on facts or suppressed any material information.

10. With the aforesaid observations/directions, the CMP application stands allowed.

(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: 13-Nov-2026 17:42:44