IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1990 of 2026
CNR No. ODHC010866432026

Sadhu Behera ..... ***Petitioner***

Represented by Adv. - Bijaya Kumar Routray

-versus-

RANJIT KUMAR CHOUDHURY and others ..... ***Opposite Parties***

Represented by Adv. -

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
18.11.2026

Order No.

01. 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 CMP application under Article 227 of the Constitution of India, the contesting Defendant No.10 in C.S. No.835 of 2017, pending in the Court of learned Fifty Addl. Civil Judge (Senior Division), Cuttack has approached this Court thereby challenging the impugned order dated 24.09.2026 passed in CMA No.199 of 2025 by the abovenoted Court on an application filed by the Plaintiff under Order 9 Rule 4 of the CPC. By virtue of the impugned order, the learned trial Court has allowed the Plaintiff's application to restore the suit by setting

aside order dated 06.09.2025 in exercise of his power under Order 9 Rule 4 of the CPC.

4. Learned counsel for the Petitioner at the outset contended that the Opposite Party No.1 as Plaintiff filed a suit for declaration, partition and other consequential reliefs. He further submitted that pursuant to the summons issued in the suit, the Defendants appeared in the suit. He further contended that while the suit was posted to 06.09.2025, the Plaintiff did not appear, as a result of which, the learned trial Court dismissed the suit due to non-prosecution. Thereafter, the Plaintiff moved an application on 24.09.2026 under Order 9 Rule 4 of the CPC for restoration of the suit. The present Petitioner-Defendant No.10 filed his objection to the restoration application and contested such application. By virtue of the impugned order dated 24.09.2026, at Annexure-1, the learned trial Court has restored the suit thereby setting aside the order dated 06.09.2025. Being aggrieved by such order, the Petitioner-Defendant No.10 has approached this Court by filing the present application.

5. While assailing the impugned order dated 24.09.2026, learned counsel for the Petitioner contended that there is absolutely no evidence from the side of the Plaintiff in the application bearing CMA No.199 of 2025 which was filed by the Plaintiff under Order 9 Rule 4 of the CPC. He further contended that on the contrary, the Defendants have led evidence that the Plaintiff was not ailing on the day, the learned trial Court ignoring the objection raised by the present Petitioner has passed an order restoring the suit and setting aside the order dated 06.09.2025. In the aforesaid backdrop, learned counsel for the Petitioner

contended that such a procedure followed by the learned Civil Court is absolutely unknown to the Code of Civil Procedure and that the same serious prejudice to the Defendant-Petitioner.

6. Upon hearing of the learned counsel for the Petitioner and on a careful examination of the background facts as well as documents on record, this Court found that the suit was dismissed due to non-prosecution by the Plaintiff vide order dated 06.09.2025. However, the Plaintiff moved an application under order dated 24.09.2025 and taking a ground that he has suffering from fever and dysentery from 04.09.2025 to 07.09.2025 and, as such, he could not attend the Court on 06.09.2025. Such application for restoration under Order 9 Rule 4 of the CPC has been filed promptly within thirty days from the date of dismissal of the suit due to default, no doubt the Defendants in the suit their objection to such application of the Plaintiff for restoration of the suit.

7. Having heard the learned counsel for the Petitioner and on a careful analysis of the impugned order dated 24.09.2026, this Court found no illegality in such order which would call for interference by this Court in exercise of the jurisdiction under Article 227 of the Constitution of India. However, on a careful examination of the ordering portion of the impugned order, it appears that the learned trial Court, while restoring the suit has imposed a cost of Rs.2000/- with a further direction to be deposited of the Cuttack Bar Association. Since it is a private litigation confined to the private parties, the cost should have paid to the Defendants who had suffered due to dismissal of the suit for the Plaintiff’s default. In such view of the matter, this Court

deems it proper to dispose of the present CMP application only with the modification that the Plaintiff shall pay the cost of Rs.2000/- to the contesting Defendants in equal proportion. In the event such cost has already been deposited with the Cuttack Bar Association, the Plaintiff shall take refund of cost of such Bar Association and pay the cost to the contesting Defendant as has been directed hereinabove. Considering the fact that the suit is of the year 2017, every endeavour shall be made by the learned trial Court to expedite the suit and to conclude the same as expeditiously as possible. Parties to the suit are directed to cooperate with the learned trial Court and shall not seek any unnecessary adjournments.

8. With the aforesaid observation and direction, the CMP application stands disposed of.

(Aditya Kumar Mohapatra)
Judge

Sisir

Signature Not Verified
Digitally Signed
Signed by: SISIR KUMAR SETHI
Designation: Personal Assistant
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 21-Nov-2026 15:34:40