IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.2046 of 2026
CNR No. ODHC010902062026

G. Phillips Parthasarathi & Ors. ***.....*** ***Petitioners***

Represented by Adv. - Prashanta Kumar Nayak

-versus-

Sagar Nayak ***.....*** ***Opposite Party***

Represented by Adv. -

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER

Order No. **26.11.2026**

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical 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 in C.S. No.160 of 2024, pending in the Court of the learned 3rd Additional Senior Civil Judge, Cuttack, has approached this Court challenging the impugned order dated 01.10.2026 at Annexure-1 to the CMP application. By virtue of the impugned order dated 01.10.2026, the learned trial court has rejected the Defendant's application under Section 89 of the CPC seeking reference of the dispute to mediation.

4. Learned counsel for the Petitioners, at the outset, contended that the Opposite Party, as Plaintiff, had instituted a suit for recovery

of money, which came to be decreed ex parte. Thereafter, the Defendants filed CMA No.46 of 2026 under Order 9 Rule 13 of the CPC seeking setting aside of the ex parte judgment and decree. The said CMA is presently pending adjudication at the final stage. In the meantime, the Defendants filed an application dated 28.09.2026 under Section 89 read with Section 151 of the CPC, seeking reference of the dispute to mediation. Since the aforesaid application was rejected by the learned trial court, the Petitioners have approached this Court by filing the present CMP application.

5. Upon hearing learned counsel for the Petitioners and on careful examination of the background facts, as well as a close scrutiny of the impugned order dated 01.10.2026 at Annexure-1, this Court finds that the Defendants' application seeking setting aside of the ex parte judgment and decree is pending adjudication before the learned trial court. However, the Defendants' application seeking reference of the dispute to mediation has been rejected by the learned trial court.

6. On a careful consideration of the factual backdrop of the present case, this Court is of the view that, although the Defendants have sought setting aside of the ex parte judgment and decree, no appeal has been preferred against the same and the suit already stands disposed of by way of an ex parte judgment and decree. Therefore, at that stage, the matter could not have been referred to mediation. In such view of the matter, this Court is of the considered opinion that the learned trial court has committed no illegality in rejecting the Defendants' prayer for reference of the dispute to mediation. However, taking into consideration the fact that CMA No.46 of 2026, filed seeking setting aside of the ex parte judgment and decree, is pending adjudication, the learned trial court is directed to expedite

the hearing and disposal of the said CMA. The learned trial court shall make every endeavour to dispose of the aforesaid CMA as expeditiously as possible, preferably within a period of two months, after providing due opportunity of hearing to both parties.

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

(A.K. Mohapatra)

Judge

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