



IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.400 of 2026

Dipak Kumar Jena

.....

Petitioner

Represented by Adv. -
Ganesh Prasad Samal

-versus-

Baishnab Ch. Jena & Anr.

.....

Opposite Parties

Represented by Adv. -

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

ORDER
07.05.2026

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 defendant No.1 in CS No.591 of 2015 pending in the court of learned Civil Judge (Senior Division), Chandikhole, has approached this Court thereby challenging the notice dated 12.11.2025 issued by the Civil Court Commissioner at Annexure-2 to the CMP application.
4. Learned counsel for the Petitioner contended that the Petitioner, who was arrayed as defendant No.1 in the suit, was set ex parte by the learned trial court. Accordingly, the Petitioner has moved an application under Order 9 Rule 13 of the CPC read with Section 151 to set aside the ex parte decree, which was registered



as CMA No.26 of 2022. He further submitted that although such CMA is pending for final consideration, however, in the meantime a Civil Court Commissioner has been appointed by the learned trial court. He further contended that in the event the Civil Court Commissioner is allowed to proceed, the same will cause prejudice to the defendant No.1-Petitioner.

5. On a careful analysis of the submissions made by the learned counsel for the Defendant No.1-Petitioner, it appears that the Petitioner was set ex parte in the suit. In the meantime, an order was passed by the learned trial court appointing Civil Court Commissioner. Since the Petitioner was set ex parte, he did not get an opportunity to oppose to the application for appointment of Civil Court Commissioner. The Petitioner came to learn about such fact once the notice was issued by the Civil Court Commissioner on 12.11.2025 at Annexure-2 and being aggrieved by such notice the Petitioner has approached this Court by filing the present CMP application.

6. On a careful analysis of the factual background of the present case, this Court deems it proper to dispose of the CMP application by directing the learned trial court to expedite the hearing of CMA No.26 of 2022 and dispose of the same as expeditiously as possible, preferably within a period of eight weeks from the date of communication of a copy of today's order. The parties are directed to cooperate with the learned trial court for early disposal of such application. Further, this Court observes that although the Petitioner has been set ex parte, however, he can always participate in the hearing of the suit. Therefore, the learned trial court shall provide opportunity to the Petitioner to cross-



examine the Civil Court Commissioner at the time of acceptance of his report, if any.

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

(A.K. Mohapatra)
Judge

Anil

Signature Not Verified

Digitally Signed
Signed by: ANIL KUMAR SAHOO
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa
Date: 08-May-2026 18:04:52

