



**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CMAPL No.115 of 2025**

***Nrusingha Prasad Sundaray and  
others***

.....

***Petitioners***

Represented by Adv. –  
M/s. S.K. Samantaray, Sirish  
Chandra Tripathy, N. Sahoo,  
Manasi Das.

-versus-

***Kaikei Sundara @ Baidehi and  
others***

.....

***Opposite Parties***

Represented by Adv. –

M/s. Tanmay Mishra, T.  
Sahoo, S. Pati  
(For O.P. Nos.8(a) & 8(b))

Mr.Ranjan Kumar Rout,  
Advocate for O.P. No.4

**CORAM:**  
**THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA**  
**ORDER**  
**24.03.2026**

**Order No.**

- 08.
1. This matter is taken up through Hybrid mode.
  2. Perused the note of the Deputy Registrar (Judicial) at Flag-Z1.
  3. On perusal of the note dated 23.03.2026, it reveals that the matter is to be taken up by this Bench in view of the standing instruction dated 20.11.2025 of Hon'ble the Chief Justice.
  4. Accordingly, the dispute with regard to the assignment of the matter to the aforesaid Bench stands resolved.



5. In view of the aforesaid standing order, this Court is taken up this CMAPL application for consideration.

6. The report of the Deputy Registry (Judicial) dated 23.03.2026 is accepted.

7. Heard the learned counsel for the Petitioners as well as the learned counsel appearing for the Opposite Party No.8(a) & 8(b) and learned counsel appearing for the Opposite Party No.4.

8. Learned counsel for the Opposite Party No.4 stated before this Court that he has instruction to appear, however, he has not filed Vakalatnama.

9. So far other Opposite Parties are concerned, none appears to represent such Opposite Parties.

10. Learned counsel for the Petitioners, at the outset, contended that the present CMAPL arises out of S.A. No.257 of 1997, which was dismissed due to non-prosecution vide order dated 21.03.2025. Drawing attention of this Court to the order dated 21.03.2025 at Annexure-2, learned counsel for the Petitioners contended that although the matter was in the list of the learned coordinate Bench, however he was given an impression that matter shall not be taken up on that date. Accordingly, learned counsel for the Petitioners left the Court with the impression that the matter will not be called out as another matter was being heard by the learned coordinate Bench. He further submitted that on the next date, the Petitioners came to learn that the matter was called out and the same has been dismissed due to non-prosecution. After coming to know about the order dated 21.03.2025, the Petitioners moved this present CMAPL for restoration of the Second Appeal on 26.03.2025, i.e. within five days from the date



the order was passed dismissing the Second Appeal due to non-prosecution.

11. In course of his argument, learned counsel for the Petitioners contended that due to laches on the part of the counsel represents the Appellant in the above noted Second Appeal, the matter was dismissed due to non-prosecution. He further submitted that although he was present on that date, however since another Second Appeal was being heard, he was given an impression that the matter is not likely to reach on that date for hearing, learned counsel for the Appellant left the Court. He further submitted that on the laches of the part of the counsel, the party could not suffer. He further contended that he came to know that some of the Respondents have died in the meantime. However, they have not been substituted, as the aforesaid fact was not intimated to the Court. In such view of the matter, learned counsel for the Petitioners submitted that the order dated 21.03.2025 dismissed the appeal due to non-prosecution having passed against the dead Respondents is nullity in the eye of law.

12. Learned counsels for the appearing Respondents, on the other hand, objected to the CMAPL application for restoration of the Second Appeal. They further submitted that although the matter was in the hearing list, however the counsel for the Appellant was absent and when the matter was called out by the coordinate Bench, none appeared before the learned coordinate Bench. Accordingly, the Second Appeal has been dismissed due to non-prosecution. They further contended that after dismissal of the Second Appeal, a valuable right has accrued in favour of the Respondents. Therefore, the order dated 21.03.2025 is not liable to be interfered with in the present CMAPL application.

13. Having heard the learned counsel appearing for the respective



parties, on a careful examination of the grounds taken in the CMAPL application, further taking note of the fact that the Second Appeal is of the year 1997, and in the meantime some of the Respondents have died, and that the matter was in the hearing list of the coordinate Bench, and further taking into consideration the fact that the present CMAPL application has been filed five days after the impugned order of dismissal dated 21.03.2025, this Court in the larger interest of justice is inclined to allow the present CMAPL application.

14. Accordingly, the CMAPL stands allowed subject to payment of cost of Rs.500/- (rupees five hundred) to each of the appearing Respondents.

15. Hence, the S.A. No.257 of 1997 is hereby restored to file

16. Since S.A. No.257 of 1997 is being restored, the interim order passed earlier was in force on the date of 21.03.2025 is also revived for further period of four weeks.

17. Registry is directed to place the S.A. No.257 of 1997 before the appropriate assigned Bench.

***(Aditya Kumar Mohapatra)***  
***Judge***

*Debasis*