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Location: High Court of Orissa, Cuttack
Date: 09-May-2026 13:31:01

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.771 of 2026

Bhabani Prasad Dash

.....

Petitioner

Represented by Adv. -
Uma Charan Mishra

Ashutosh Mishra, Adv.

-versus-

Pradipta Mohanty

.....

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 mode.
 2. Heard learned counsel for the Petitioner. Perused the CMP application as well as the prayer made therein.
 3. The plaintiff in C.S. No.940 of 2026 pending in the court of learned Civil Judge, Jr. Div., Bhubaneswar has approached this Court by filing the present CMP application under Article 227 of the Constitution of India challenging the impugned order dated 27.04.2026 passed in I.A. No.1 of 2026 filed under Order-39, Rule-3 of the CPC, thereby rejecting the prayer of the Petitioner for grant of ad interim injunction against the defendants.
 4. Learned counsel for Petitioner at the outset contended that initially the Petitioner as plaintiff filed a suit for permanent injunction simpliciter. Along with the plaint the Petitioner filed an application under Order-39, Rule-1 & 2 of the CPC as well as an



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application under Order-39, Rule-3 of the CPC for grant of *ad interim ex-parte* injunction. In course of his argument, learned counsel for the Petitioner contended that the suit property is a residential property where the defendant is planning to run his office. He further submitted that the lift attached to the suit property, which has been used by the occupants of the building, is likely to be uninstalled and repositioned as per the convenience of the defendant who is occupying a portion of the building. In the aforesaid factual backdrop, learned counsel for the Petitioner contended that such repositioning of the lift is bound to cause serious prejudice to the plaintiff and other occupants of the building. He further contended that the defendants are utilizing the building in violation of the building regulation, i.e. they are running an office in a residential zone. On the aforesaid allegation the plaintiff filed an application under Order-39, Rule-3 of the CPC pleading urgency before the learned trial Court to pass an interim order to protect the interest of the plaintiff.

5. Learned counsel for the Petitioner further contended that the learned trial Court by virtue of the impugned order dated 27.04.2026 rejected the prayer of the Petitioner for *ad interim ex-parte* injunction only on the ground that there exists no urgency in the matter. He further alleged that the learned trial Court has not given any justification with regard to non-existence of the urgency in the application of the plaintiff filed under Order-39, Rule-3 of the CPC. Being aggrieved by such order of the learned trial Court, the Petitioner has approached this Court by filing the present application.

6. Perused the application filed under Order-39, Rule-3 of the



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CPC at Annexure-3 as well as the plaint filed in the suit at Order-39, Rule-3 to the CMP application. On perusal of the plaint, it appears that the plaintiff has narrated the entire incident, particularly in Para-11 of the plaint it has been specifically alleged that although the defendants were requested by the plaintiff to restore the normal nature and character of the flat and instead of using the same for commercial purpose, use the same for residential purpose and not to restrain them from using the common lift, the defendants did not take any steps. As a result of which, the plaintiff has approached the learned trial Court by filing the suit for permanent injunction simpliciter along with the application under Order-39, Rule-3 of the CPC.

7. On a careful analysis of the pleadings as well as the submission made by the learned counsel for the Petitioner, this Court found that there exists factual foundation to support the contention of the Petitioner with regard to urgency involved in the suit, however, the same has not been taken into consideration by the learned trial Court by passing the impugned order dated 27.04.2026 and the same has been simply tossed aside only on the ground that the learned trial Court did not find any urgency in the prayer made by the Petitioner under Order-39, Rule-3 of the CPC. No doubt it is the discretion of the learned trial Court to grant interim relief, however, the same should be based on the appreciation of the facts and materials available before him. In the present case, on a careful scrutiny of the documents annexed to the CMP application, this Court found that the learned trial Court has not examined the matter in its proper prospective. At least, the impugned order does not reveal the same.



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8. Taking into consideration the aforesaid analysis of the factual position, this Court is of the view that without entering into the merits of the matter the present CMP application can be disposed of by directing the learned trial Court to consider and dispose of the application under Order-39, Rule-1 & 2 of the CPC as expeditiously as possible as there is only one defendant and the matter is fixed to be taken up on 13.05.2026. Accordingly, it is directed that let the application under Order-39, Rule-1 & 2 of the CPC be considered after providing due opportunity to both sides and every endeavor shall be made to 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.

9. As an interim, it is directed that till the application of the Petitioner under Order-39, Rule-1 & 2 of the CPC is considered, status-quo with regard to the suit scheduled property shall be maintained by the parties till the next date. However, liberty is granted to the learned trial Court to modify such status-quo order in the event the learned trial Court finds it otherwise after providing opportunity of hearing to the defendants.

10. With the aforesaid observation/ direction, the CMP application stands disposed of.

(Aditya Kumar Mohapatra)
Judge