



IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1119 of 2026

Kamal Kishore Agarwal

.....

Petitioner

Represented by Adv. -
Ashok Kumar Sarangi

-versus-

State Of Odisha and Ors.

.....

Opposite Parties

Represented by Adv. –

Mr. S. Behera, AGA

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
09.07.2026

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Heard learned counsel appearing for the petitioner.
3. Perused the CMP application as well as the prayer made therein.
4. By filing the present CMP application under Article 227 of the Constitution of India, 1950, the plaintiff in C.S. No.135 of 2008, which was disposed of by the learned Sr. Civil Judge, Rourkela by virtue of judgment and decree dated 19.05.2010, has approached this Court challenging the decision of the learned Trial Court to take up both the application for condonation of delay as well as the application under Order 9 Rule 13 of the CPC, 1908 as involved in CMA No.126 of 2021.



5. Learned counsel appearing for the petitioner at the outset contended that the petitioner-plaintiff has filed a suit for declaration of right, title, interest, permanent injunction and for other ancillary reliefs. It was initially decreed *ex parte* vide judgment dated 19.05.2010, at Annexure-4 to the CMP application. It was contended that after disposal of the suit by virtue of an *ex parte* judgment and decree, the defendant moved an application vide CMA No.126 of 2021 under Order 9 Rule 13 read with Section 151 of the CPC, 1908 along with an application for condonation of delay. Learned counsel appearing for the petitioner, at this juncture, contended that the aforesaid application has been filed almost a decade after the suit was decreed *ex parte*. It was contended that while taking up the application for condonation of delay, the learned Trial Court has passed order dated 29.11.2022, whereby learned Trial Court has decided to take up both the application for condonation of delay as well as application under Order 9 Rule 13 together for hearing. While assailing the impugned order dated 29.11.2022, learned counsel for the petitioner contended that the learned Trial Court should have taken up the application for condonation of delay first before taking up the application under Order 9 Rule 13 of the CPC, 1908. It was contended that although such application has been filed since 2021, neither the application for condonation of delay nor the application under Order 9 Rule 13 have been disposed of by the learned Trial Court.



6. Being aggrieved by such conduct of the learned Trial Court, the petitioner has approached this Court by filing the present CMP application.

7. Having heard the learned counsel appearing for the petitioner and on a careful consideration of background facts, further on a closed scrutiny of the documents annexed to the CMP application as well as the impugned order at Anenxure-1 Series, this Court observes that although the application under Order 9 Rule 13 has been filed since 2021, it has not yet been taken up for consideration by the learned Trial Court, even though 5 years have been lapsed in the meantime.

8. Taking into consideration the aforesaid factual scenario, this Court deems it proper to dispose of the present CMP application by directing the learned Trial Court to make every endeavour to consider and dispose of the application for condonation of delay and CMA No.126 of 2021 as expeditiously as possible, preferably within a period four months from the date of communication of a copy of today order. It is further made clear that the learned Trial Court shall consider the application for condonation of delay first before entering into the merits of the application under Order 9 Rule 13 of the CPC, 1908. The parties are directed to cooperate the learned Trial Court for early disposal of such application. Particularly, the defendant who has approached the learned Trial Court by filing the application for setting aside the *ex parte* decree shall



take prompt steps to ensure that notices are served on the Opp. Parties in the CMA immediately.

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

(ADITYA KUMAR MOHAPATRA)

Judge

Utkalika