

IN THE HIGH COURT OF ORISSA AT CUTTACK

M.A. No.682 of 1994

**Odisha Mining Corporation Ltd.
& Anr.**

Appellants

-versus-

Md. Mazharul Haque & 56 Ors.

Respondents

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
08.07.2022**

Order No

- 35.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. P.K. Muduli, learned counsel for the Appellant, Mr. G.N. Rout, learned counsel appearing on behalf of Respondent Nos.3, 4, 5 & 6. None appears for the contesting Respondents.
3. The present appeal has been filed by the Appellant-Company challenging the order dtd.08.08.1994 passed in M.J.C. Case No. 2/93 by the learned Sub-ordinate Judge, Champua in rejecting an application filed by the Appellants on 22.09.1992 in T.S. No.25/87.
4. It is submitted that when the suit in T.S. No.25/87 was decreed ex parte on 22.09.1992, the Appellant after coming to know about the same from the engaged counsel on 30.01.1993, filed an application under order 9 Rule 13 along with an application for condonation of delay on 01.02.1993.

5. Mr. Muduli, learned counsel for the Appellant submitted that in the application filed under Sec. 5 of the Limitation Act, the delay was explained properly but the learned Court below without proper appreciation of the same did not condone the delay and accordingly rejected the application filed under order 9 Rule 13 of the CPC. From the materials available on record this Court is of the view that learned court below while passing the order on 08.08.1994, has not appreciated the grounds taken by the Appellant is its proper prospective.

6. Since the decree in question is an ex parte decree, for effectual adjudication of the lis, learned court below should have allowed the said Petition by allowing the Appellant to contest the suit on merit. In view of that the order dtd.08.08.1994 is hereby set aside and while setting aside the same, learned court below is directed to hear the Petition so filed under order 9 Rule 13 on merit without insisting on delay in filing the same.

7. Since the matter is of the year 1993, this Court directs the learned court below to take a final decision on the application filed under Order 9 Rule 13 within a period of two (2) months from the date of receipt of this order.

8. The appeal is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha