

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMAPL No. 139 of 2018

Kalyani Behera

.....

Petitioner

Mr. H.S. Mishra, Advocate

Vs.

Basanti Satpathy and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA &

Mr. S.K. Sarangi, Sr. Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

28.09.2022

Order No.

05.

I.A. No. 69 of 2018 & CMAPL No. 139 of 2018

This matter is taken up through hybrid mode.

2. This Interlocutory Application has been filed for condonation of delay in filing the CMAPL, which has been filed to recall the order dated 19.07.2017 and to restore WP.(C) No. 1639 of 2014 to its file.

3. Mr. H.S. Mishra, learned counsel for the petitioner contended that CMAPL application has been filed for recall of the order dated 19.07.2017 and to restore W.P.(C) No. 1639 of 2014 to its file on the ground stated therein. It is contended that the petitioner while trying to get Misc. Case No. 17725 of 2015 arising out of the said writ petition for orders after receiving the request from the petitioner and another matter arising out of the same incident was being pursued before the Civil Judge, Bhubaneswar, which was posted on the last week, the clerk-in-charge as well as the advocate came to know on 20.03.2017 that the case has been dismissed for non-prosecution on 19.07.2017, as averred in paragraph-4 of the I.A. After coming to know about the dismissal of the writ petition for non-prosecution,

the petitioner filed the application for restoration of the writ petition, but by that time since there was a delay of 221 days in filing the CMAPL application, the petitioner filed the present Interlocutory Application.

4. This court issued notice to the opposite parties in the limitation matter. Pursuant to that, an objection was filed by the opposite party though Mr. S.K. Sarangi, learned Senior Advocate, wherein at paragraph-8 it has been stated as follows:-

“8. That the averments made in paragraph 5 of the petitioner are all false and denied. That the Opp. Party’s son Badal Satpathy was present on 19.07.2017 in Court. In the first hour Shri Mishra, learned Counsel appearing for the petitioner sought accommodation after lunch. Accordingly the Hon’ble Court adjourned the matter after lunch but due to non-appearance after lunch the matter was dismissed for default. Hence the averments made therein are all false as the petitioner was aware of the dismissal of the case on 19.07.2017.”

5. In view of such position, since each day of delay which has been caused by the petitioner has not been explained as required under law, keeping in view the judgment passed by this Court in ***State of Orissa and another v. Bishnupriya Routray and another***, 118 (2014) CLT 588, this Court is not inclined to condone the delay in filing the CMAPL application.

6. Accordingly, the Interlocutory Application stands dismissed and consequentially, CMAPL stands dismissed.