

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.291 of 2022

Prasanna Kumar Dhal & Ors.

....

Petitioner(s)
Mr. B.B.Mishra-2,
Advocate.

-versus-

State of Odisha & Anr.

....

Opp.Party(s)
Mr.R.P.Mohapatra, AGA

CORAM:
JUSTICE BISWANATH RATH

ORDER
18.04.2022

Order No.

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1. Heard learned counsel appearing for the parties.
2. This Court finds since the matter involves a certiorari proceeding, no counter is required and the argument can be based on the pleadings already available and the plea that has been taken in this Court. Keeping in view the consent of Mr. Mohapatra, learned Additional Government Advocate, this matter is taken up for final hearing.
3. This Civil Miscellaneous Petition involves a challenge to the allowing an application for condonation of delay of nearly six years by the lower appellate court in entertaining the C.M.A.No.1 of 2021 arising out of R.F.A.No.69 of 2010, dismissed for non-appearance of Government counsel being appellant therein. Taking this Court to the limitation petition, Mr.Mishra, learned counsel appearing for the petitioner reading taking through the grounds submitted even after taking into consideration the grounds there, particularly, the grounds that State should not be aware of posting of the case and the development therein for the death of the counsel engaged there for long time cannot be considered for the reason that there was no following of the litigation by the litigant in getting into the development in its own appeal, Mr.Mishra, learned Counsel also contended that looking to the

position of the appellant, a mighty State, it cannot be also otherwise considered that the State remains helpless in protecting its appeal bending before the judicial forum and further for the State usually having a long panel for engagement in its litigates, even assuming one of the counsel dies, nothing prevented to other counsels to at least take up the case of the State and or person-in-charge in the particular Department taking appropriate steps and in reasonable time. It is in this view of the matter, Mr.Mishra, learned counsel also taking to its objection, objected the impugned order herein.

4. Mr. Mohapatra, learned Additional Government Advocate taking this Court to the stand taken in the limitation petition for the restoration order dated 14.03.2014 involving RFA No.69 of 2010 that once a counsel is engaged to conduct particular case, State became dependant on such counsel and for engagement of such large number of counsels, it may not be otherwise possible to track the positioning of the particular counsel. As a consequent, Mr.Mohapatra, learned Additional Government Advocate further also taking the stand that once a particular counsel is engaged for conducting the case, there is no responsibility of other State Counsel even to step into such situation. It is in the above background and on the premises that even assuming there is some pain with the decree holder in ultimately ripening decree involved, that could have been compensated and the dispute of this nature should be decided on its own merit.

5. Considering the rival contentions of the parties and looking to the nature of suit, this Court observes even assuming that there is suffering to the decree holder, this nature of dispute should be decided on contest. This Court finds since there is sufficient ground of non-appearance particularly on account of the death of the attending counsel engaged for the purpose. This Court also finds strength in the submission of Mr.Mohapatra, learned State Counsel that once there is a particular appearing counsel in CMA and or in the Appeal, no other counsel can represented the case. At this stage of the matter, this Court finds

once appeal is preferred by the State involving a Department and or its representative cannot get excuse not taking up and or following the appeal proceeding at the instance of the State for year together. Further time loss and the pain of the decree holder cannot be also lost sight of. In this circumstance, while finding the nature of appeal ought to be decided on contest keeping in view the loss and suffering of the decree holder, this Court though approved the condonation of delay but finds while condoning such huge delay, the appellate court should have consider appropriate compensation to compensate the suffering of the decree holder. This Court here finds there is delay of more than six years, not a small delay. Keeping this in view and as the State property involved, this Court here maintains the order in condoning delay and considering the restoration application involving appeal at the same time, this Court also imposes a cost of Rs.30,000/- (Rupees thirty thousand) to be paid by the State to the decree holder in the lower appellate court or to its counsel at least within a period of two weeks hence. On payment of cost, the impugned order shall come into operation and the appeal shall be restored and the first appeal shall be taken up for consideration on merit.

6. The Civil Miscellaneous Petition stands disposed of with the observation made hereinabove.

(Biswanath Rath)
Judge