

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.16962 OF 2010

Dhabaleswar Naik

....

Petitioner(s)

Mr.B.N.Nayak,
Advocate

-versus-

Rup Singh Babu and another

....

Opposite Party(s)

CORAM:
JUSTICE BISWANATH RATH

ORDER

14.09.2022

Order No.

06.

1. Heard the submission of Mr.B.K.Nayak on behalf of Mr. Pujari learned counsel for the Petitioner.

2. The Writ Petition involves allowing an application under Section 5 of the Limitation Act involving an attempt under order 22 of the C.P.C. bringing the L.Rs. of the deceased of the sole plaintiff. Taking this Court to only filing of substitution application and setting aside the abatement in the first instance, statement is made in Court that once limitation petition was not accompanied with the substitution application and there is already delay occurred, both applications required to be dismissed. It is next contended that there is however filing of Section 5 of the application, subsequently for the delay and there is no sufficient ground in bringing such application after so much lapse of time. Petitioner attempts objecting on allowing of Section 5 application by the trial court.

3. Considering the submission of Mr.Nayak, learned counsel for the Petitioner, this Court finds the death of plaintiff occurred on 29.06.2009, the substitution application came to be filed for setting

aside abatement petition on 01.02.2010 and further the limitation petition was filed on 07.07.2010. In the first attempt since there was already filing of application for substitution and the Petitioner to set aside abatement of Section 5 application should relegate back to the filing of substitution petition.

4. For the own submission of Mr.Nayak, learned counsel for the Petitioner that hearing of the suit did not even commence by the time, such attempt is made, this Court though finds there is some delay but from the observations of the trial court considering there is delay in filing such application, the condonation delay application was allowed but however subject to payment of cost of Rs.200/-. This Court further for the position of the suit and the nature of suit involved finds the suit was even not ready for hearing. As there was no commencement of hearing, there is no prejudice to the defendant in bringing such application even it included delay. This Court finds, there is appropriate consideration of the objection of the defendant and allowing the Petitioner on granting cost also but however there is awarding of insufficient cost in allowing such application, as there is definite prejudice to the defendant involved therein.

5. In the circumstance while declining to interfere with the order in allowing the condonation of delay application, this Court only interferes in the cost aspect and enhance the cost to Rs.500/- required to be paid to the defendant within two weeks of communication of order to the counsel for the defendants in the Trial Court. With this modification the impugned order is confirmed and interim direction therein stands vacated. Considering oldness in the suit, the trial court is also directed to conclude the C.S. No.8 of 2002 proceeding at least within a period of six months from the date of communication of the

order by the Petitioner. Registry is directed to communicate such order to the concerned court.

6. The Writ Petition stands disposed of.

(Biswanath Rath)
Judge

Swarna

