

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 318 OF 2022

Pramod Kumar Singh and others* *Petitioners

Mr. Amit Prasad Bose, Advocate

-versus-

Bhabani Shankar Singh Deo and others* *Opp. Parties

None

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.11.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The I.A. No. 917 of 2022 is listed for extension of the interim order dated 29th April, 2022 passed by this Court.
 3. While considering the application for extension of the interim order, this Court finds that the issue involved in the CMP is trivial and due to pendency of CMP, the matter is lingering before learned District Judge, Kalahandi at Bhawanipatna. In spite of repeated calls, none appears for Opposite Party nos.1 to 5. Although Mr. Sujay Shakar Singh Deo-Opposite Party No.3 is represented by learned counsel, but none appears on his behalf. Notices on Opposite Parties returned back on their refusal. Hence, it is treated to be sufficient.
 4. On consent of learned counsel for the Petitioners, the CMP is taken up for final disposal.
 5. This CMP has been filed assailing the order dated 7th March, 2022 (Annexure-1) passed in CMA No.12 of 2021,

whereby learned District Judge, Kalahandi at Bhawanipatna condoned the delay in filing CMA No.12 of 2021 (wrongly stated as CMA No.13 of 2018 in the impugned order).

6. Mr. Bose, learned counsel for the Petitioner referring to the order sheet of CMA No.12 of 2021 as at Annexure-14 submits that no notice whatsoever in the limitation matter was served on the Petitioner in CMA No.12 of 2021, who was the Opposite Party No.4 therein.

7. On perusal of the order sheet of CMA No.12 of 2021, it appears that the case was adjourned to different dates, but nothing reveals from the order sheet to suggest that the notice in the petition under Section 5 of the Limitation Act in CMA No.12 of 2021 was ever served on the Petitioner (Opposite Party No.4 therein).

8. None appeared on behalf of Opposite Parties although notice is sufficient on them and the Opposite Party No.3 is being represented by learned counsel.

9. In view of the above, this Court has no hesitation to set aside the order dated 7th March, 2022 (Annexure-1) passed by learned District Judge, Kalahandi at Bhawanipatna in CMA No.12 of 2021. Accordingly, the impugned order under Annexure-1 is set aside and the matter is remitted back to the learned District Judge, Kalahandi at Bhawanipatna to adjudicate the petition under Section 5 of the Limitation Act in CMA No.12 of 2021 afresh giving opportunity of hearing to the parties concerned. The Petitioner shall appear before learned District Judge, Kalahandi at Bhawanipatna along with certified copy of

this order on 9th December, 2022 to receive further instruction in the matter, as undertaken by Mr. Bose, learned counsel for the Petitioner.

10. With the aforesaid observation and direction, this CMP is disposed of.

Urgent certified copy of this order be granted on proper application.

bks

(K.R. Mohapatra)
Judge

