

IN THE HIGH COURT OF ORISSA AT CUTTACK

L.A.A. No. 19 of 2019

***Ministry of Railways, Union
of India represented by
Chief Engineer
(Construction) II, East Coast
Railway, Bhubaneswar***

Appellant

Mr. Jatadhari Nayak, CGC

-versus-

***Shyam Sundar Sahoo and
Others***

Respondents

CORAM: JUSTICE SANJAY KUMAR MISHRA

ORDER

18.10.2022

Order No.

04.

I.A. No. 107 of 2019 & L.A.A. No. 19 of 2019

- 1.** This matter is taken up through hybrid mode.
- 2.** Mr. Jatadhari Nayak, learned CGC submits that he has instruction to render appearance in this case for the Appellant and undertakes to file the Memo of Appearance in course of the day.
- 3.** As per the Office Note, certified copy of the impugned Judgment has not yet been filed, though the Appeal was filed on 16.05.2019, for which stamp reporting could not be done till date.
- 4.** This Appeal has been preferred against the Judgment dated 08.03.2018 passed by the learned

Senior Civil Judge, Kamakhyanagar in L.A. Misc. Case No 240 of 2015. There is a delay of more than a year in filing the present Appeal.

5. As it seems from the record that the impugned Order was pronounced on 08.03.2018 and the certified copy was issued on 11.04.2018, whereas this Appeal has been filed on 16.05.2019 and the application for delay i.e. I.A. No. 107 of 2019, was filed on 26.07.2019. Though this I.A. has been filed under Section 5 of the Limitation Act for condonation of delay, but the reasons indicated in the said I.A. are not convincing and it seems that the delay has not been properly explained.

6. The apex Court in the case of ***Office of the Chief Post Master General & Ors. Vrs. Living Media India Ltd. & Anr.*** reported in ***(2012) 3 SCC 563*** observed as under:

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a

liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

7. Also, in view of the recent judgment/order of this Court in the case of ***State of Odisha Vrs. Surama Manjari Das*** (W.P.(C) No.15763 of 2021 dismissed on 16.07.2021), which has been passed relying on the decision of the Supreme Court in the case of ***The State of Madhya Pradesh Vrs. Bherulal***, reported in ***2020 SCC Online*** SC 849, this Court is not inclined to issue notice to the Respondent, on the question of limitation in the present I.A.

8. Accordingly, the I.A., so also the Appeal preferred under Section 54 of the Land Acquisition Act, 1894 stand dismissed on the ground of delay and laches.

(S. K. MISHRA)
JUDGE

AKPradhan

