

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMAPL No.368 OF 2019

Iswar Chandra Pani

....

Petitioner

Mr.D.R. Mohapatra, Advocate

-versus-

Subash Chandra Pani & Others

....

Opposite Parties

CORAM:

MR. JUSTICE D.DASH

ORDER

26.09.2022

Order No.

I.A. No.152 of 2019

13. 1. This matter is taken up through hybrid arrangement (virtual/physical) mode.

2. Learned counsel for the Petitioner (Appellant No.RSA No.377 of 2011) submits that the Respondents 1 and 2 have died in the year 2017. It is submitted that the present application under Order 41 Rule 19 of the Code of Civil Procedure has been filed for restoration of the Second Appeal, which had been dismissed for non-prosecution by order dated 21.09.2015. He thus in this way provides the reason in explaining the defects pointed out by Stamp Reporter that the opposite parties being not the parties in the Original Second Appeal why have been so arraigned here. In view of the above, he prays to ignore the defects as pointed out.

The submission being accepted, the defects stand ignored.

3. The Petitioner (Appellant) has filed this application for restoration of the Second Appeal which has been dismissed on 21.09.2015. He has also filed an application under section 5 of the

Limitation Act for condoning the delay of 1302 days (3 Years 6 months 27 days).

4. Learned counsel for the Petitioner, reiterating the averments taken in the application, submits that on 13.05.2019, the Petitioner had made attempt to contact his counsel to ascertain about the result of the Appeal, but it was not so possible and thereafter it is said that he having engaged another counsel, could come to know on 14.05.2019 that the Second Appeal had been dismissed for non-prosecution on 21.09.2015. He submitted that the Petitioner had no negligence in the matter of such absence and the delay thereafter in filing the application was neither deliberate nor intentional.

Keeping in view the submissions, the averments taken in the application being gone through, it is seen that the explanations provided thereon for such long delay are quite casual. It also on a reading appears that the date regarding the receipt of information as to disposal of the Appeal has been selected to somehow meet the purpose and there is no material to provide any support to the same, this Court of the view that the Petitioner has not shown that he was prevented by sufficient cause in not taking steps in the matter of restoration of the Appeal, for all these period of 3 years 6 months and 27 days.

For the aforesaid, this court is not inclined to entertain the application.

5. Accordingly, the CMAPL and IA are dismissed.

**(D. Dash),
Judge.**