

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.19635 of 2022

Surya Narayan Das

....

Petitioner(s)

Mr.A.P.Bose, Advocate

-versus-

Sub-Collector, Puri & Ors.

....

Opp.Party(s)

Mr.S.Ghose, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
22.08.2022**

Order No.

1

1. Heard learned counsel appearing for the parties.
2. The appeal order dated 31.05.2022 at annexure-1 is assailed on the premises of some direction of this Court on entertainment of a writ petition earlier. Mr.Bose, learned counsel appearing for the petitioner taking this Court to the previous direction of this Court urged once there is a question of maintainability involving the appeal under Mutation Manual, the question of maintainability should have been decided ahead of deciding the question of condonation of delay. It is in this circumstance and as the appellate authority first decided the question of delay, Mr.Bose, learned counsel for the petitioner contended that the impugned order should be interfered.
3. Heard the submission of Mr.Ghose, learned Additional Government Advocate, who opposes the claim of the petitioner on the premise that unless the delay is condoned, there is no room for involving in the main proceeding. Considering the contentions raised herein, this Court finds unless the main matter gets on Board, question of maintainability of the main proceeding cannot be undertaken. This Court is even also of the view unless the delay aspect involving the appeal or any proceeding is undertaken and the delay condoned, there is

no existence of the main proceeding and therefore, the question of maintainability or entertainability, if any, can only be gone into after main proceeding becomes maintainable. In the circumstance, this Court finds there is no illegality in the impugned order in condonation of delay before proceeding to decide maintainability of the main proceeding. While declining to interfere in the impugned order, this Court however taking note of the direction of this Court dated 2.11.2020 in W.P.(C).No.3382 of 20018, this Court directs the appellate authority before entering into the merit involving mutation appeal, first to decide the maintainability of the appeal but, however involving both parties. Other question raised herein is left open to consider at the time of hearing on the question of maintainability.

4. The writ petition stands dismissed but with the observation made hereinabove.

(Biswanath Rath)
Judge

Sks

