

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.19801 OF 2022

Mitrabhanu Behera

....

Petitioner

Mr.D.J.Sahoo, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.Ghosh, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
30.9.2022**

**Order
No.**

02.

1. Heard learned counsel for the Parties.
2. The Writ Petition involves a challenge to the order of the Appellate Authority involving OLR Appeal No.7/2010 at the instance of the present Petitioner being dismissed for default of the Petitioner.
3. Finding the Revision attempt to be unnecessary wastage of time as the dispute involves dismissal of the Appeal ex parte and for non-cooperation of the appellant, this Court felt it appropriate to issue notice to the private O.P.4 to give her a chance in the hearing process. Accordingly, by order dated 24.8.2022 this Court was pleased to direct the Petitioner to serve extra copies of the Brief on the learned State Counsel appearing for O.Ps.1 to 3. As a

consequence, Office Note discloses that on filing requisites for issuing notice to O.P.4, notice was issued fixing the date of appearance to 21.9.2022. Office Note further reflects that notice being issued to O.P.4, Brief appears to have been already served on the Party except A.D. is not received back by this Court. In spite of eight clear dates having been passed, there is no appearance of O.P.4. This Court records, the private O.P.4 is not showing interest for contesting the litigation.

4. In the process, entering into hearing, this Court finds, the impugned order dated 24.12.2019 keeping in view the allegation involved herein vis-à-vis the request involved, this Court finds, both the appellant as well as O.P.4. therein were absent on 24.12.2019, on which date the matter was dismissed for the appellant not showing interest. This Court finds, there are some reasons even in the Writ Petition showing the reason of non-attendance on the fateful date. This Court though is not satisfied with the reasonings but however considering that the nature of dispute involved in OLR Appeal No.7/2010, this Appeal should have been disposed of on merit rather than dismissing technically.

5. In the process, this Court interfering with the impugned order dated 24.12.2019 sets aside the same directing restoration of OLR Appeal No.7/2010 on the File of the A.D.M.-cum-Collector,

Mayurbhanj, O.P.2. While directing the Petitioner to appear before O.P.2 along with copy of this order on 12.10.2022, this Court also takes into consideration the unnecessary suffering of O.P.4 for no fault of her. Thus, while interfering with the impugned order and remitting the matter, to provide the Petitioner/appellant one more chance, this Court finding the respondent suffering for no account of her imposes a cost of Rs.5000/- (rupees five thousand) on the present Petitioner, who will deposit the same before the trial court on the date of appearance and on proper application by O.P.4 in the trial court, the amount shall be released in her favour. Since the matter is already decided here in non-cooperation of the private O.P.4, on receipt of copy of this order, the Appellate Authority shall do well in issuing notice to the O.P. therein afresh and decide the matter giving opportunity to both sides.

6. The Writ Petition stands allowed.

(Biswanath Rath)
Judge

M.K.Rout