

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.446 of 2019

Sushila Parija and another

....

Appellants

Dr. J. K. Lenka, Advocate

-versus-

United Commercial Bank, Kolkata and others

....

Respondents

Mr. S. K. Mohanty, Advocate for Respondent No.3-Bank

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
15.11.2022**

Order No.

11. 1. The challenge in the present appeal is to an order dated 27th August, 2019 passed by the learned Single Judge dismissing CMAPL no.146 of 2019 filed by the present Appellants questioning an order by which OJC No.4969 of 2002 filed by the husband of the present Appellant No.1 was dismissed by the learned Single Judge for default on 6th July, 2017.
2. The background facts are that the aforementioned OJC No.4969 of 2002 was filed by the husband of present Appellant No.1 and father of Appellant No.2 against the United Commercial Bank (Respondent No.1) questioning the order passed by the Bank terminating his services.
3. During the pendency of the writ petition, the husband of present Appellant No.1 expired on 1st June, 2014. As it further transpired, even the lawyer, who was conducting the case on behalf of husband of the present Appellant No.1, himself expired. As a reason, the Appellants were not aware of either the pendency of

the aforementioned OJC No.4969 of 2002 or its dismissal for default on 6th July, 2017.

4. Learned Single Judge has not accepted the above explanation by referring to another order passed by this Court in ***State of Odisha v. Smt. Bishnupriya Routray, 118 (2014) CLT 588*** where the learned Single Judge had declined to condone the delay of 706 days in preferring the appeal.

5. As is evident, the aforementioned decision was in an appeal filed by the State of Odisha and not by an individual. Ultimately, every case has to be examined on its own peculiar facts particularly on the issue of condonation of delay. No parallel can be drawn between the appeal filed by the State of Odisha with an appeal filed by an individual. Consequently, the Court is of the view that the said judgment could not have constituted the precedent as far as the present case was concerned.

6. The fact remains that the Appellants were the legal representatives of the deceased employee and the explanation offered by them, particularly in view of the death of the lawyer himself, was a plausible one and merited acceptance. The rigid rules governing the delay caused by the State Government in filing the matters before the Court cannot apply *ipso facto* to appeals and petitions by the individuals. Consequently, the Court is of the view that in the peculiar facts and circumstances of the case as explained above, the delay of 559 days of present Appellants in preferring the application for restoration of the writ petition ought to have been condoned.

7. For the aforementioned reasons, the impugned order dated 27th August, 2019 passed by the learned Single Judge is hereby set

aside. This will mean that I.A. No.181 of 2019 for condonation of delay in filing CMAPL No.146 of 2019 is hereby allowed. For the same reason, CMAPL No.146 of 2019 is also to be considered to be allowed. The net result is that OJC No.4969 of 2002 would stand restored to the file of the learned Single Judge in the roster Bench and will be listed there for directions on 15th December, 2022. Copy of the writ petition be served on learned counsel appearing for the Bank within three working days. If not already filed, the Bank will file its reply to the writ petition on or before 9th December, 2022 and rejoinder thereto, if any, should be filed by 15th December, 2022. Considering that the writ petition is an old matter, no further time would be granted for the above purpose.

8. In the writ petition, the present Appellants will stand automatically substituted as LR's of the Writ Petitioner and there need not be any separate proceedings for that purpose.

9. Learned Single Judge is requested to proceed with the writ petition on merits and endeavour to dispose it of as expeditiously as possible and in any event, not later than six months thereafter.

10. The appeal is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda