

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.21162 of 2022
(Through hybrid mode)**

Radharani Patra and another* *Petitioners

-versus-

Union of India and others* *Opposite Parties

Advocates appeared in the case:

For Petitioners

- Mr. Amit Prasad Bose, Advocate
Mr. D. J. Sahu, Advocate
Mr. S. Swain, Advocate
Mr. D. Sahoo, Advocate

For Opposite Parties

- Mr. K. C. Kar, Advocate
(Sr. Panel Counsel)
Mr. A. K. Sharma, AGA

CORAM:

JUSTICE ARINDAM SINHA

JUDGMENT

10.10.2022

1. Mr. Bose, learned advocate appears on behalf of petitioners. He submits, his clients are legal heirs of petitioner/claimant before the Court below in Arbitration Misc. Case no.57 of 2009. Said petitioner died on 11th July, 2021. Prior thereto he had instructed his learned advocate to prosecute the arbitration case for enhancement of the

compensation for acquiring his land.

2. The arbitration case was duly prosecuted by learned advocate engaged. There was award by judgment dated 26th March, 2022 enhancing the compensation and direction for payment of interest. On getting intimation thereof, petitioners applied for substitution, to be able to obtain the enhanced compensation. The substitution application made along with applications for condonation of delay and setting aside abatement, were rejected by impugned order dated 18th July, 2022. He submits further, no appeal has been preferred against said award, to knowledge of his clients.

3. Mr. Kar, learned advocate, Senior Panel Counsel appears on behalf of Union of India. On query from Court he submits, petitioners are the legal heirs and entitled to the enhanced compensation. His client has already deposited for disbursement. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State and submits, his client is the disbursing authority.

4. It appears, petitioners had made three several applications. The first was under order XXII rule 3 in Code of Civil Procedure. Second application was under order XXII rule 9, for setting aside abatement and the third, for condonation of delay under section 5 in Limitation Act, 1963. The applications were all dismissed. Reason given in

impugned order is extracted and reproduced below.

“As it appears, from the facts and circumstances of the case, only due to absence of knowledge of the counsel with regard to the death of the petitioner, no proper step could be taken to set aside the abatement order. But on the other hand, the petitioners being the wife and son of the deceased-petitioner, they have sufficient knowledge with regard to death of the petitioner. From the aforesaid conduct of the petitioners, it appears that they don't bother to bring the matter of death of the petitioner to the notice of the Court and as such, the Court passed the final order. Considering the fact that despite the petitioners having their knowledge about the death of the deceased-petitioner remained silent for a long time, this Court found no sufficient reason to condone the delay and as such, the petition stands rejected and consequently, the petitions filed under Order-22 Rule-3 & 9 also cannot be entertained and as such, the same stand rejected.”

5. On query from Court Mr. Bose points out the causes given by his clients for have not having informed fact of death during pendency of the case. Paragraphs 2 and 3 from the application under order XXII rule 9 are reproduced below.

“2. That, thereafter, when the counsels telephoned in the given number, the wife of the petitioner informed the counsel that her husband Ramesh Patra has already been passed away on 11.07.2021 i.e. the during the period of Covix-19 and deceased petitioner is survived by her as his

wife and Sudip Kumar Patra as his son. She also told that after her husband's early death, she and her son were completely broken down and could not inform the counsels about said demise of Ramesh Patra.

3. That, in the event of death of the original petitioner Ramesh Patra on 11.07.2021 and without the substitution of his legal heirs in time, the case was automatically abated and order passed in favour of the deceased Ramesh Patra on 26.03.2022. ”

6. Order XXII rule 10-A provides for duty of pleader to communicate to Court, death of a party. In the arbitration case, the pleader did not have information that his client had died. He discharged his duty in belief that his client was alive. The case resulted in award dated 26th March, 2022, enhancing compensation payable on land of the deceased, acquired. There is no dispute that petitioners are the legal heirs and that they are entitled to the enhanced compensation. Petitioners in their application filed under order XXII rule 9 had applied on contention that there was automatic abatement in the meantime.

7. On yet further query from Court Mr. Sharma submits, last date of hearing in the arbitration case was on 14th March, 2022. As such, rule 6 in order XXII cannot come to aid of petitioners.

8. There is none before this Court, who urged that award dated

26th March, 2022 is a nullity. In execution, the only ground available under section 47 in the Code is that the decree is a nullity. Therefore, the award for enhanced compensation can be executed. So much so that Union of India has already deposited the amount, for it to be disbursed by State. Petitioners are undisputedly legal heirs of the land loser, since deceased.

9. In view of aforesaid, adjudication must depend on working of rule 10-A in order XXII. The rule is reproduced below.

“10-A. Duty of pleader to communicate to Court death of a party.—whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

In the arbitration case, the pleader did not come to know of death of the party. The mandate upon him to inform the Court, therefore, could not be complied with. Further mandate on the Court to give notice of death to the other party, also could not be complied with. So it is that the case was argued and culminated in enhanced compensation by award dated 26th March, 2022.

10. In the facts and circumstance, this is a fit case where in

exercise of power of superintendence under article 227 in the Constitution of India, there will be direction upon the executing Court, being the Court of the District Judge, Balasore, to permit petitioners to apply for execution of award dated 26th March, 2022 as legal heirs of Ramesh Patra, since deceased, in whose name the award was made. For the purpose, petitioners will produce this order at the time of filing the execution case.

11. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant

