

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMAPL NO.399 OF 2022

Aditya Narayan Singh Babu & Others ***Petitioners***

Mr.N. Lenka, Advocate

-versus-

Prabhash Chandra Bhanjdeo & Others ***Opposite Parties.***

CORAM:

MR. JUSTICE D.DASH

ORDER

14.11.2022

CMAPL NO.399 OF 2022

&

I.A. NO.161 OF 2022

Order No.

02. 1. This matter is taken up through hybrid arrangement (virtual/ physical) mode.
2. This application has been filed for readmission of the Second Appeal (S.A. No.92 of 1994), which has been dismissed for non-prosecution on 03.03.2022. The above application having been filed after expiry of the period of limitation; the Petitioners have also filed one application under Section-5 of the Limitation Act to condone the delay.
3. Heard learned Counsel for the Petitioners (Appellants-Defendants).
4. Keeping in view the submissions made, the record of S.A. No.92 of 1994 being gone through, it is seen that said Appeal had already abated as against Respondent No.16 who was the Defendant No.3 before the Trial Court and Respondent No.14 before the First Appellate Court and even an order to that effect has specifically been passed on 15.01.2008.

Similarly, the Appeal as against Respondent Nos. 11 & 12, who were the Plaintiff Nos. 2 & 3 respectively before the Trial Court and Respondent Nos.13 and 14 respectively before the First Appellate Court had already abated by the time of its dismissal for non-prosecution.

In the above situation, the legal representatives of those deceased-Respondents have not been arraigned in the present Application for readmission of the Appeal as the Opposite Parties and the cause title simply finds mention as “since dead”, the Application as laid thus is not entertainable as in the absence of those legal representatives of the deceased-Respondent Nos. 11, 12 and 16 who are necessary parties, the matter cannot proceed.

5. Accordingly, the CMAPL as well as the I.A. stands dismissed.

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

Narayan

