

IN THE HIGH COURT OF ORISSA AT CUTTACK

Writ Appeal No.765 of 2021

Tarini Thakurani **Appellant**
Mahavidyalaya, Ghatagaon
Mr. Amiya Kumar Mohanty (A), Advocate
-versus-
Sidharth Kumar Das & **Opp. Parties**
another

None

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
17.02.2022

Order No.

- 01.** **1.** This matter is taken up through virtual/physical mode.
- 2.** The present Intra-Court Appeal is directed against the order dated 29.09.2021 passed by the learned Single Judge, whereby the restoration application filed after the delay of 724 days was dismissed.
- 3.** Learned counsel for the Appellant has relied upon the orders passed by the Hon'ble Supreme Court on 23rd of March, 2020 as also 23rd of September, 2021 to contend that the period from 15.03.2020 till 02.10.2021 would stand excluded from considering the delay of 724 days in filing the application seeking restoration of the case for hearing, which was dismissed in default.

4. After hearing learned counsel for the petitioner and perusing the orders relied upon, we are not persuaded to accept his contention.

5. Concededly the writ petition of the appellant was dismissed in default on 14.08.2019 and the limitation for filing of the restoration expired by the end of September, 2019. It is also not in dispute that the application for restoration was filed on 06.09.2021. We find that the intent of the orders passed by the Hon'ble Supreme Court is relatable to the limitation period of the cases which was to expire during the period with effect from 15.03.2020 till 02.10.2021. The judgments of the Hon'ble Supreme Court shall enure to the benefit of the appellant-petitioner if the period of limitation for filing the petition for restoration lapses after 15.03.2020. In this context, reference is made to the judgment dated 18th September, 2020 of the Hon'ble Supreme Court in the case of **Sagufa Ahmed & Others v. Upper Assam Plywood Products Pvt. Ltd. & Others** in Civil Appeal Nos.3007-3008 of 2020.

6. In the present case, concededly the limitation for filing the restoration expired much before the order dated 23.03.2020 was passed by the Hon'ble Supreme Court. Learned counsel for the appellant has referred to certain judgments to stress that for the lawyer's mistake, the client should not suffer. We find that in the present case the petition for restoration of W.P.(C)

No.9524 of 2008 has been filed with a considerable period of unexplained delay. Even if the period from 15.03.2020 till the said restoration petition is filed, is excluded, there is a delay of around 212 days. Therefore, we are not inclined to condone the inordinate delay in filing the restoration petition, i.e., CMAPL No.219 of 2021. We find no fault with the approach of the learned Single Judge.

7. The Writ Appeal is accordingly dismissed.

**(Jaswant Singh)
Judge**

**(M.S. Raman)
Judge**

February 17th, 2022
Cuttack

AKK

