

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMAPL No.307 OF 2021

Banamali Bhotra

....

Petitioner

Mr.J.K. Naik,
Advocate

-versus-

Radha Choudhury & Another

....

Opposite Parties

CORAM:

MR. JUSTICE D.DASH

ORDER

Order No.

21.03.2022

1. 1. This matter is taken up by Hybrid Arrangement (Virtual/ Physical) mode.
2. This Petitioner, by filing this application, has prayed for recall of the order dated 25.10.2021 passed by this Court in Misc. Case No.282 of 2018 and the consequential order passed in RSA No.150 of 2018.

It is the averment of the application that misc. Case and RSA having been dismissed for default/non-prosecution by order dated 25.10.2021; those are required to be restored so as to provide an opportunity to the Petitioner (Appellant) to have his say in the matter.

3. Learned counsel for the Petitioner submits that although on that day, i.e., 25.10.2021., he was very much ready to take part in the hearing, there being failure of the internet link, he could not participate being not able to join Court in virtual mode. He submits that his non-appearance on that day is neither intentional nor deliberate and for that, the Petitioner should not suffer.

The order dated 25.10.2021 being perused, it is seen that said Misc. Case No.282 of 2018 had arisen out of a petition under Section 5 of Limitation Act filed by the present Petitioner for condonation of delay in filing the Appeal. It is true that it has been indicated that none was present on behalf of the Petitioner when the matter was called. But then, this Court in presence of the learned counsel for the Opposite Parties has proceeded to consider the explanation offered by the Appellant for the delay. The delay being 4346 days (11 years 10 months) in filing the Second Appeal; this Court has found the explanations, as provided as wholly unsatisfactorily. Therefore, the prayer for condonation has been refused and consequently, the Appeal has been dismissed.

4. Taking into account the submission advanced by the learned counsel for the Petitioner, I do not find that any such useful purpose would be served by recalling the said order wherein this Court has taken everything into consideration in finally saying that this long delay does not deserve condonation.

5. In view of the above, the CMAPL stands dismissed.

(D. Dash),
Judge.