

IN THE HIGH COURT OF ORISSA AT CUTTACK

**CMAPL No.346 Of 2021
(Through hybrid mode)**

Land Acquisition Officer (N.H.) ***Appellants***
Cum Competent Authority and
another

Mr. A. Patnaik, Advocate

-versus-

Ananta Charan Sahoo and another ***Respondents***

Mr. A.K. Mishra, Advocate

CORAM: JUSTICE ARINDAM SINHA

Order
No.

ORDER
28.03.2022
I.A. No.152 of 2021

3. 1. Mr. Patnaik, learned advocate appears on behalf of appellants and submits, I.A. no.152 of 2021 is his client's application for condonation of delay of 1090 days in presenting the restoration application. His client's appeal ARBA no.18 of 2018 stood dismissed by operation of order dated 13th July, 2018, on omission to remove defects. Explanation has been given, inter alia, in paragraphs 2 to 4. They are reproduced below.

“2.That, on 13.07.2018, when the above cited case was listed before this Hon'ble Court, the conducting Advocate of the case was away at Sambalpur, attending the Court of the District Judge, in connection with Arbitration Appeal No. 02 of 2017.

As such, the conducting Advocate could not know about the posting of the date on the said date, as also any Orders passed therein.

3. That, the above cited Appeal was disposed off prior to admission, before issuance of notice to the Opp. Parties/Respondent.

4. That, the above named Appellants came to know about the disposal off the above cited Appeal only on 23.11.2021, when the above cited Arbitration Appeal Vide No.ARBA 18 of 2018 was directed to be tagged with another Arbitration Appeal No.04 of 2018, on the directions issued by this Hon'ble Court, when the matter was posted for hearing.”

2. Mr. Mishra, learned advocate appears on behalf of respondents and opposes the application.

3. It appears from order sheet in the appeal that it was presented without certified copy of impugned order. Presentation was on 3rd April, 2018. No steps were taken thereafter. On 13th July, 2018 coordinate Bench directed as follows.

“Defects as pointed out shall be removed within a week, failing which the appeal shall stand dismissed without further reference to the Bench.”

Accordingly the appeal stood dismissed.

4. In order dated 23rd November, 2021, made in respondent's appeal, inter alia, following was said.

“It transpires that respondent's appeal ARBA no.18 of 2018 stood dismissed by operation of order dated 13th July, 2018. By said order defects were directed to be removed within a week, failing which the appeal would be dismissed without further reference to the Bench.”

It is clear that applicants had simply presented a memorandum of appeal without accompanying certified copy of impugned order. They took no steps to thereafter obtain and file the certified copy, let alone making enquiry in the Registry regarding listing of the appeal. Years later, when respondents were prosecuting their appeal, applicants say they came to know about the dismissed appeal. Facts show that applicants were not interested in their appeal but came forward when respondents were prosecuting their appeal. As such the explanation is unsatisfactory.

5. I.A. no.152 of 2021 is dismissed. By reason of dismissal of the I.A., the CMAPL is also dismissed.

(Arindam Sinha)
Judge

Sks