

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.759 of 2021

K.Tirupati Amma and another* *Petitioners

Mr.Soumya Mishra, Advocate

-versus-

Collector Malkangiri and another* *Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

28.06.2022

Order No.

2.
 1. This matter is taken up through Hybrid mode.
 2. Counter affidavit filed on behalf of Opposite Party Nos.1 and 2 is taken on record.
 3. Petitioner in this CMP seeks to assail the order dated 23rd November, 2021(Annexure-6) passed in RFA No.17/2013 (09/2010) whereby learned District Judge, Malkangiri accepting the additional cost of Rs.20,000/- as directed by this Court in CMP No.524 of 2021 after the stipulated date, took up the appeal for hearing.
 4. Mr. Mishra, learned counsel for the Petitioner submits that the State of Odisha represented though Collector, Malkangiri has filed the aforesaid First Appeal assailing judgment and decree dated 16th October, 2001 and 19th October, 2001 passed by learned Civil Judge (Junior Division), Malkangiri in TS No.11 of 2000. Vide order dated 11th December, 2018, learned Appellate Court condoned the delay of more than eighteen years in filing the appeal. Assailing the same, the Petitioner preferred W.P.(C) No.18924 of 2010,

which was disposed of vide judgment dated 5th February, 2016 with the following direction.

“It is stated in the application for condonation of delay that Malkangiri is a newly created district, Collectorate, Malkangiri had no infrastructure nor its own building. The office was functioning in different places from time to time starting from the residence of the Collector, Malkangiri. After the judgment was delivered, the file was processed. Due to frequent shifting of the Collectorate, the file was misplaced. What more cause could have been shown? The grounds stated in the application for condonation of delay constitute sufficient cause. In view of the same, the learned trial court has rightly condoned the delay. But then, the learned court below has not awarded the cost. Considering the grounds taken in the application for condonation of delay, the same is allowed subject to payment of cost of Rs.30,000/- to the learned counsel for the respondents-petitioners within a period of eight weeks from today. Learned lower appellate court is directed to conclude the hearing of the appeal by end of June, 2016. The petition is disposed of.”

Although a direction was made to pay the cost within a period of eight weeks from the date of the said judgment, but the said order was not complied with till 2021 when an application was filed by the present Petitioner to dismiss the appeal for non-compliance of order of this Court.

4.1 Considering the fact that the cost has already been deposited by the time the petition was moved, learned District Judge dismissed the same. Assailing the said order, the Petitioner filed CMP No.524 of 2021. And considering the submissions of learned counsel for the parties, this Court disposed of the said CMP vide order dated 4th October, 2021 with the following direction.

“6. Taking into consideration the submissions made by learned counsel for the parties, it appears that after disposal of W.P.(C) No. 18924 of 2010, the said order was neither brought to the notice of learned District Judge nor the cost as directed was deposited within the stipulated time. Thus, there

are latches on the part of the Opposite Parties in complying with the direction of this Court. However, since by order dated 5th February, 2016 passed in W.P.(C) No. 18924 of 2010, this Court had directed to conclude the hearing of the appeal by end of 2016, I am of the considered view that an additional cost of Rs.20,000/- (Rupees twenty thousand only) over and above Rs. 30,000/- (Rupees thirty thousand only) would be just and proper to meet the ends of justice, which shall be paid to the Petitioners-Respondents, as expeditiously as possible preferably within a period of one month from today, failing which the appeal in RFA No. 17-2013 (9/2010) pending before learned District Judge, Malkangiri shall stand dismissed for non-prosecution. It is made clear that the cost deposited shall be released in favour of the Petitioners-Respondents forthwith.”

4.2 It is submitted by Mr. Mishra, learned counsel for the Petitioner that although a specific direction was issued to pay an additional cost of Rs.20,000/- within a period of one month from the date of the said order and it was further directed that the First Appeal will stand dismissed for non-prosecution, if the order is not complied with, the cost remained un-paid till 21st November, 2021. The additional cost as directed by this Court in the earlier CMP was deposited only on 22nd November, 2021, which cannot be said to be compliance of this Court's order. Due to non-compliance of the order passed by this Court within the time stipulated in CMP No.524 of 2021, the default clause has already operated and the First Appeal should have been dismissed for non-prosecution. He further submitted that the order passed in CMP No.524 of 2021 was neither challenged nor any application under Section 148 CPC was filed for enlargement of time to comply with the said order. On the other hand, learned District Judge, Malkangiri finding fault with the present Petitioner (Respondent in the First Appeal) for non-submission of

certified copy of the said order accepted the cost paid after the due date and proceeded to hear the First Appeal. The procedure adopted by learned District Judge, Malkangiri is unknown to law and in violation of order of this Court passed in CMP No. 524 of 2021. When the cost was not paid within the time stipulated by this Court, learned District Judge had no other option than to dismiss the First Appeal for non-prosecution. It is his submission that the observation of learned District Judge is also self-contradictory, as in one hand he observed that filing of the Appeal as well as mode of approach adopted by the Additional Government Pleader, Malkangiri indicates latches on its part, on the other hand in the very next line, learned District Judge observed that as the additional cost has already been deposited, that shows the *bona fide* on the part of the present Opposite Parties (Appellants in the First Appeal). He, therefore, prays for setting aside the impugned order under Annexure-6 and to direct dismissal of the appeal for non-prosecution.

5. Mr. Mishra, learned ASC refutes the above submission and submits that although the Petitioner (Respondent in the First Appeal) informed learned District Judge about order passed in CMP No.524 of 2021 to pay additional cost, but the certified copy of the said order was not produced in spite of several opportunities given to the Petitioner. As rightly observed by learned District Judge, Malkangiri, the Petitioner waited till lapse of time to file certified copy to ensure default on the part of the Appellants and dismissal of the First Appeal for such default. It appears that there are some lapses on the part of the Opposite Parties (Appellants) in paying additional

cost as directed by this Court, but that should not stand on the way of adjudication of the appeal in which a substantial right of the State-Appellants is involved. It is his submission that although after the stipulated date the order passed in CMP No.524 of 2021 has already been complied with and the learned Appellate Court has proceeded with hearing of the Appeal. Thus, the impugned order should not be interfered with at this stage. The property in question is a valuable piece of land in the heart of Malkangiri town. Taking into consideration the facts and circumstances of the case, on learned District Judge had condoned the delay in filing the appeal, which has been confirmed twice by this Court on payment of substantial amount of cost as well as additional cost, which has already been paid. Thus, the impugned order warrants no interference.

6. Taking into consideration the submissions of learned counsel for the parties, this Court finds force in the submission of Mr. Mishra, learned counsel for the Petitioner to the effect that the order passed in CMP No.524 of 2021 has not been complied with in its letter and spirit. Further no petition under Section 148 CPC was filed for enlargement of time to pay said cost. It is also observed by learned District Judge that filing of the appeal as well as mode of approach adopted by learned Additional Government Pleader, Malkangiri indicates laches on its part. It is well-settled that for the laches on the part of learned counsel a party should not suffer. The Court however, expresses its concern over the conduct of the government officials in complying with the direction of this Court. The Collector, Malkangiri should look into the matter and if

required should fix responsibility for such lapses in complying direction of this Court in time. Further, learned Appellate Court should have acted within its bounds while accepting the cost, which is admittedly deposited after the stipulated time granted by this Court. However, order of condonation of delay in filing the appeal has been confirmed by this Court subject to payment of cost as well as additional cost as directed by this Court in different proceedings and the same have already been deposited. Further, the First Appeal involves a substantial right of the State of Odisha over a valuable piece of land in Malkangiri town, which is posted for hearing. Hence, this Court feels that the matter should be given a quietus. As such, this Court declines to interfere with the impugned order.

7. Accordingly, the CMP is disposed of with an observation that the government officials and their representative(s) in Court are to be careful in participating in the proceedings and complying with the direction of the Court within time. Learned Government Pleader/AGP attached to the Court of learned District Judge, Malkangiri shall make over a copy of this order to do the needful.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge