IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.178 of 2025

(In the matter of application under Section 173(1) of the Motor Vehicles Act, 1988).

Kailash Panda … ***Appellant***

-versus-

Purna Khety and another … ***Respondents***

For Appellant : ***Mr. H.S. Mishra, Advocate***

For Respondents : ***Mr. R.N. Debata, Advocate (for R-1)***

CORAM: JUSTICE G. SATAPATHY
DATE OF HEARING & JUDGMENT:10.04.2026(ORAL)

G. Satapathy, J.

IA No.379 of 2025 & MACA No.178 of 2025

1. This application in IA No.379 of 2025 by the appellant-petitioner U/S.5 of Limitation Act, 1963 is for condonation of delay of 1142 days in preferring the appeal.

2. Heard, Mr. Himanshu Sekhar Mishra, learned counsel for the appellant-petitioner and Mr. Rabindra Nath Debata, learned counsel appearing for R1 virtually and perused the record. None appears for R2/OP.2 despite valid service of notice of IA on him.

3. Mr. Mishra, learned counsel for the appellant-petitioner, however, by placing the facts as stated in paragraph-4 of the IA No.379 of 2025 submits that since the impugned judgment was passed without the knowledge of the appellant-petitioner, he could not prefer the appeal in time and once he came to know about the passing of the impugned judgment, he has preferred this appeal and, therefore, there is no latches or negligence on the part of the appellant-petitioner, rather the appellant-petitioner was prevented by sufficient cause for not preferring the appeal in time. Mr. Mishra also alternatively submits that the Opposite Party can be compensated for the delay by imposing some cost on the appellant-petitioner. In summing up his argument, Mr. Mishra, prays to allow the IA by condoning the delay in preferring the appeal.

3.1. On the other hand, Mr. Rabindra Nath Debata, learned counsel appearing virtually for R1, however, strongly opposes the prayer for condonation of delay by contending *inter-alia* that the certified copy of judgment annexed to the appeal having been made ready on 07.12.2022, the knowledge of the appellant-petitioner

can be attributed from the said date and the appellant-petitioner having not explained the cause of delay for around three years, the application for condonation of delay by the appellant-petitioner merits no consideration and may kindly be rejected.

4. After having considered the rival submissions upon perusal of record, it appears that the appellant-petitioner has filed this application in IA No.379 of 2025 for condonation of delay of 1142 days by averring *inter-alia* the following in paragraph-4 of the IA, which reads as under:-

> *"**4.** That on receiving the said notice, he approached and consult Sri Pravat Mohapatra, Advocate, Sambalpur. He handed over the notice executed Vokalatnama and required professional fees to appear for him in the case and to do the needful. He had also given his Mobile number for contact as and when necessary. On receiving the same, the learned Advocate assured him to look after the case and call him as and when necessary and assuring that nothing will happen as he is not the owner of the vehicle."*

5. The aforesaid plea of the appellant-petitioner has been in fact challenged by the Opposite Party by filing objection stating inter-alia therein that the impugned copy of judgment was made ready on 07.12.2022 clearly

establishing that the appellant-petitioner had knowledge of the impugned judgment at least from the said date and despite such knowledge, the appellant-petitioner has failed to file the appeal within prescribed period of limitation. Be that as it may, the delay of 1142 days is not a mere delay, rather it is a delay for a substantial period, however, the delay can be condoned provided it is found that the appellant-petitioner was prevented by sufficient cause for not preferring the appeal in time, but in this case, it is the plea of the appellant-petitioner that his advocate did not communicate him about the matter, rather he assured that nothing will happen as he is not the owner of the vehicle. The plea as advanced by the appellant-petitioner is mere an oral assertion, but no document or any material has been produced to indicate that the said advocate did not communicate to the appellant-petitioner, however, when a litigant appears in a litigation, onus is on him to contact his lawyer about the proceeding/ litigation in which he is concerned and in this case, it is not forthcoming as to when the appellant-petitioner handed over the brief to his counsel and when he appeared in the case, but admittedly the appellant-

petitioner has approached this Court after gap of 1142 days after the expiry of limitation for preferring the appeal, which appears to be not bonafide in the circumstance. It is quite easy to say that the advocate did not contact the appellant-petitioner, but there is no explanation as to why the appellant-petitioner remained indolent/negligent in contacting his advocate for such a long duration at least for around more than four and half years of passing of the impugned judgment and even before the passing of impugned judgment since the claim was filed in the year 2018 and impugned judgment therein is passed on 21.09.2021. The explanation as offered by the appellant-petitioner does not appeal to be conscience of the Court, rather it appears to be a mere plea than any substance in it.

6. Law always helps the diligent, but not the indolent and, therefore, the plea as advanced by the appellant-petitioner for condonation of delay cannot be countenanced inasmuch as nothing has been brought to the notice of the Court to suggest that the appellant-petitioner was prevented by any sufficient cause in not preferring the appeal in time. Besides, passing the

responsibility to the conducting counsel to communicate his client is quite easy, but it is to be required to be established and in this case, the appellant-petitioner has made a mere plea then producing any material to such effect. It is also not out of place to mention that the appellant-petitioner since being was set *ex-parte* in the proceeding before the learned tribunal, he could have approached the learned tribunal in appropriate proceeding to establish the aforesaid plea by way of leading evidence, but the appellant-petitioner preferred to approach this Court with mere averment of his plea without substantiating the same. In the aforesaid facts and situation, this Court does not find any merit in the plea of the appellant-petitioner for condonation of delay.

7. In the result, the application for condonation of delay in IA No.379 of 2025 being unmerited stands dismissed and as a consequence thereof, the appeal being not admitted stands dismissed. As a necessary corollary, IA No.399 of 2025 and 2594 of 2025 stand disposed of as infructuous.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 10th day of April, 2026/Subhasmita

Signature Not Verified
Digitally Signed
Signed by: SUBHASMITA DAS
Designation: Sr. Stenographer
Reason: Authentication
Location: High Court of Orissa
Date: 11-Apr-2026 12:48:34