

IN THE HIGH COURT OF ORISSA, CUTTACK

I.A. No.348 of 2019

(ARISING OUT OF CMAPL No. 864 of 2019)

In the matter of an application under section 5 of the Limitation Act, 1908 for condonation of delay in filing the CMAPL application.

Shankarlal Patwari Petitioner

-Versus-

Shri Jagannath Mahaprabhu
and others Opp.Parties

For Petitioner : - Mr. Ajit Kumar Tripathy

For Opp.Parties: - Mr. Subrat Satpathy
(for Opp.Party No.1)
Mr. P.K. Muduli,
Add. Govt Advocate
(for Opp.Parties nos.2 to 5)

P R E S E N T:

THE HON'BLE MR.SUBHASIS TALAPATRA, CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE SANGAM KUMAR SAHOO

Date of Hearing: 22.09.2023 Date of Judgment: 29.09.2023

S.K. SAHOO, J. The CMAPL petition has been filed for restoration of W.P.(C) No. 14709 of 2006 which was dismissed for non-filing of requisites for issue of notice to the opposite parties nos.2 to 5

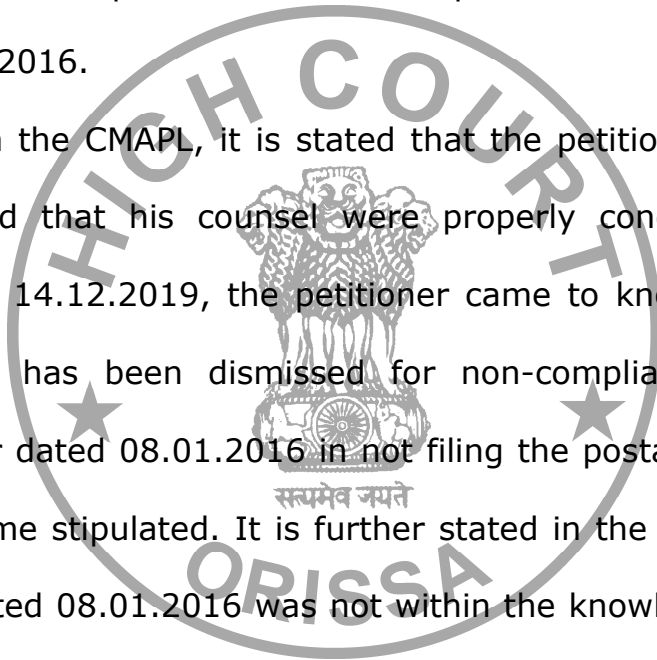
within the stipulated period of one week as per order dated 08.01.2016.

2. The petitioner Shankarlal Patwari filed the writ petition vide W.P.(C) No. 14709 of 2006 for quashing the order dated 08.11.2000 passed by the Tahasildar -cum- O.E.A. Collector, Puri in O.E.A. Claim Case No.218 of 1990 under Annexure-11 and the order dated 16.10.2006 passed by the Additional District Magistrate, Puri in O.E.A. Appeal No.01 of 2001 under Annexure-13.

The said writ petition was taken up for admission on 21.11.2006 and notice was issued to the opposite parties on the question of admission by registered post with A.D. and requisites were directed to be filed by 23.11.2006. On the same day in Misc. Case No.13499 of 2006 which was filed along with the writ petition, prayer for dispensing with the filing of certified copy of Annexure-4 was allowed; however, the petitioner was directed to file the certified copy of Annexure-4 within six weeks. Another Misc. Case vide Misc. Case No. 13185 of 2006 filed by the petitioner for passing interim order was dismissed on the very same day. The requisites for issuance of notice to the opposite parties by registered post with A.D. as was directed to be filed vide order dated 21.11.2006 was not complied with by the

learned counsel for the petitioner and when the matter was listed on 08.01.2016, this Court granted one week time for filing postal requisites and passed specific order that on failure to file the requisites, the writ petition shall stand dismissed without further reference to the Bench and on filing the requisites within time stipulated, office shall proceed accordingly. The order dated 08.01.2016 was not complied with by the learned counsel for the petitioner for which Deputy Registrar (Judicial) on 18.02.2016 dismissed the writ petition for non-compliance of Court's order dated 08.01.2016.

3. In the CMAPL, it is stated that the petitioner in good faith believed that his counsel were properly conducting the case, but on 14.12.2019, the petitioner came to know that the writ petition has been dismissed for non-compliance of the Court's order dated 08.01.2016 in not filing the postal requisites within the time stipulated. It is further stated in the CMAPL that the order dated 08.01.2016 was not within the knowledge of the petitioner and the counsel for the petitioner did not intimate him to comply the aforesaid order of this Court and due to negligence of the conducting counsel, postal requisites could not be filed for which the writ petition was dismissed for default without reference to the Bench. It is further stated in the CMAPL petition



that after coming to know about the order on 14.12.2019, the petitioner made an enquiry and came to know that Sri Bidyadhar Mishra, Advocate, who was the counsel for the petitioner in the writ petition is residing at Bhubaneswar and he was not attending the Court for few years. It is further stated in the CMAPL petition that the petitioner came to the chamber of his counsel at Cuttack, but could not trace out his file. On 16.12.2019 and 17.12.2019, the petitioner with the help of Juniors of Sri Bidyadhar Mishra, searched the chamber and got the file and thereafter, he decided to disengage his earlier counsel and to file the restoration application with new set of counsel. It is further stated that due to the negligence of the previous counsel, the petitioner suffered a lot and unless the writ petition is restored, the petitioner would suffer irreparable loss.

One interim application vide I.A. No.348 of 2019 was filed under section 5 of the Limitation Act, 1963 for condoning the delay as the Stamp Reporter has pointed out that there was delay of 1391 days in filing the CMAPL.

4. After issuance of notice, the opposite parties have entered appearance and objection was filed by the opposite party no.1 Shri Jagannath Mahaprabhu, Marfat Srimandir Parichalana Committee through Administrator of Shri Jagannath

Mahaprabhu Temple, Puri wherein it is stated that law of limitation may harshly affect a particular party, but it has to be applied with all its rigor when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. It is further stated in the objection that sufficient cause is a condition precedent for exercise of the discretion by the Court for condoning the delay and the petitioner has not explained sufficient cause to condone inordinate delay of 1391 days as each and every day of delay should be properly explained in the petition by the petitioner. It is further stated that the explanation given by the petitioner while praying to condone the delay in filing the restoration application is a fanciful one and no where it is stated that for some unavoidable circumstances beyond his control, the delay has occasioned and therefore, there is no prima facie justification for condoning the delay. It is further stated that the property involved in the case is the 'Amrutamanohi' property of Lord Jagannath Mahaprabhu Bije, Puri, who is the absolute owner of the case land and is a perpetual minor and disabled person and therefore, it is the duty of the Court to protect the interest of minor deity. It is stated in the objection that imaginary and fabricated story has been mentioned in the petition to escape the

burden of proof and to draw some sympathy of the Court and the finger pointed out to the previous conducting counsel was just to overcome long delayed period from the date of order to the filing of CMAPL petition.

5. Mr. Ajit Kumar Tripathy, learned counsel appearing for the petitioner contended that the petitioner has a very good case on merit and this Court being satisfied about the same, issued notice to the opposite parties and since as per the order of this Court, steps were to be taken for issuance of notice to the opposite parties by filing requisites and the previous counsel of the petitioner did not communicate the order of the Court to him, steps could not be taken and it cannot be said that non-taking of steps on the part of the petitioner was deliberate or intentional, rather it was on account of communication gap and for the laches of the counsel, the petitioner should not be allowed to suffer. Learned counsel for the petitioner placed reliance in the case of **Collector, Land Acquisition, Anantnag and others - Vrs.- Mst. Katiji and others reported in A.I.R. 1987 Supreme Court 1353, Janardan Mohapatra and others - Vrs.- Brajabandhu Mohapatra and others reported in 2008 (Vol.II) Orissa Law Reviews 573 and State of Tamil Nadu -**

Vrs.- Anbai Kingston Phillips and others reported in 2015 (Vol.II), Current Legal Reports (S.C.) 148.

Mr. Subrat Satpathy, learned counsel appearing for the opposite party no.1 vehemently opposed the petition for condonation of delay so also the CMAPL petition for restoration of the writ petition. He reiterated the stand taken in the objection and argued that the inordinate delay in filing CMAPL should not be condoned and consequently the CMAPL should be dismissed. He placed reliance in the case of **Balwant Singh -Vrs.- Jagdish Singh and others reported in (2010) 8 Supreme Court Cases 685.**

Mr. P.K. Muduli, learned Additional Government Advocate appearing for the opposite parties nos.2 to 5 supported the stand taken by the learned counsel for the opposite party no.1.

6. Adverting to the contentions raised by the learned counsel for the respective parties, certain things are not disputed i.e. passing of the order dated 21.11.2006 by this Court in the writ petition in issuing notice on the question of admission to the opposite parties by registered post with A.D. with a further direction to file the requisites by 23.11.2006. It is also not disputed that requisites were not filed by the learned counsel for

the petitioner in compliance with the order dated 21.11.2006 and when the matter was listed nine years after on 08.01.2016, this Court again granted one week further time for filing postal requisites with a peremptory order that the writ petition shall stand dismissed without further reference to the Bench if the requisites are not filed within a week. It is also not disputed that the said order was also not complied with by the learned counsel for the petitioner for which the writ petition stood dismissed without reference to the Bench and the CMAPL was filed on 18.12.2019 for restoration of the writ petition. In the case of **Mst. Katiji** (supra), the Hon'ble Supreme Court has been pleased to hold as follows:-

"3. The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of the CPC, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a

meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have

vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with

the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grate status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits."

In the case of **Janardan Mohapatra and others** (supra) relying upon the case of **Mst. Katiji** (supra) held as follows:

"6. The anguish expressed by the Hon'ble Supreme Court in the aforesaid case continues to be a reality even today and in spite of repeated directions of the Supreme Court as well as this Court, in the matter of delay, the trial Courts continue to approach the issue of delay in an extremely pedantic technical manner, thereby, causing disservice to the interest of the litigants as well as the Courts. I reiterate herein that the expression "sufficient cause" as contained in Section 5 of the Limitation Act, 1963 while being

held to be widely elastic, the intent behind it, is to enable the Courts to apply law in a meaningful manner which subserves the ends of justice and that remains the life purpose for the existence of the institution of Courts.”

In the case of **Anbai Kingstone Phillips** (supra), when the matter came up before the Hon’ble Supreme Court for condoning the delay of 3412 days in the representation of the 2nd appeal papers, it was held as follows:-

“9. The appeal, as mentioned earlier, was filed within the stipulated period of limitation but could not be re-presented for a long time as the defects were not rectified. The question all the same is whether there was sufficient reason for the delay in doing so. The fact that delay is inordinate stretching over nearly 10 years, cannot be denied. At the same time, it is fairly well-settled that the State functions in an impersonal fashion and that the ordinary standards, applicable to a litigant pursuing his own case, do not at times apply *stricto sensu* to the action or inaction of the State. That apart the enquiry conducted by the Registrar (Vigilance) of the High Court has not in the instant case suggested any collusion at the level of the State Government. What appears to have actually happened is that the appeal papers were presented within the time but repeatedly represented without fully removing the defects, in

which process there was considerable delay. This was mainly because the officers concerned do not appear to have acted diligently. There is no gainsaying that the two range officers who have been indicted in the enquiry report were themselves under the supervisory control of higher officers who ought to have looked into the matter and ensured that the papers were re-filed in time. Suffice it to say, we are in the light of the enquiry report submitted by the Registrar (Vigilance) inclined to condone the delay no matter inordinate in its length. We, however, do so subject to payment of costs of 50,000/- (Rupees Fifty Thousand) which amount shall be deposited in the Advocates' Welfare Fund, if there is any, failing which with the High Court Legal Services Committee."

In the case of **Balwant Singh** (supra), which was relied upon by the learned counsel for the opposite party no.1, it has been held as follows:-

"16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide

reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.

17. On an analysis of the above principles, we now revert to the merits of the application in hand. As already noticed, except for a vague averment that the legal representatives were not aware of the pendency of the appeal before this Court, there is no other justifiable reason stated in the one page application. We have already held that the application does not contain correct and true facts. Thus, want of bona fides is imputable to the applicant. There is no reason or sufficient cause shown as to what steps were taken during this

period and why immediate steps were not taken by the applicant, even after they admittedly came to know of the pendency of the appeal before this Court. It is the abnormal conduct on the part of the applicants, particularly Har-Inder Singh, who had appeared as AW 4 in the trial and was fully aware of the proceedings, but still did not inform the counsel of the death of his father. The cumulative effect of all these circumstances is that the applicants have miserably failed in showing any 'sufficient cause' for condonation of delay of 778 days in filing the application in question."

Taking into account the ratio laid down in the case of Ms.Catji, a three-judge Bench of the Hon'ble Supreme Court in the case of **University of Delhi -Vrs. Union of India and others reported in (2020) 13 Supreme Court Cases 745** wherein the judgment of the High Court of Delhi declining to condone the delay of 916 days in filing the appeal challenging the judgment of the learned Single Judge was under consideration, it was held as follows:-

"21. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the Appellant is public body. The entire explanation noticed above,

depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal. In addition in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the Respondents seeking dismissal of the instant appeal but it is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appeal had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified.

22. The entire explanation for the inordinate delay of 916 days is twofold, i.e. the non-availability of the Vice-Chancellor due to retirement and subsequent appointment of new Vice-Chancellor, also that the matter was placed before the Executive Council and a decision was taken to file the appeal and the said process had caused the delay. The reasons as stated do not appear very convincing since the situation was of availing the appellate remedy and not the original proceedings requiring such deliberation when it was a mere continuation of the proceedings which had already

been filed on behalf of the Appellant herein, after due deliberation. Significantly, the Vice-Chancellor who was at the helm of affairs when the writ petition was filed, prosecuted and disposed of on 27.04.2015 was available in the same office till 28.10.2015, for about six months which was a long enough period as compared to 30 days limitation period for filing appeal. In that circumstance when the said Vice-Chancellor who had prosecuted the writ petition was available, the submission of the learned Senior Counsel for the Appellant that unseen hands are likely to have prevented the filing of the appeal also cannot be accepted. Secondly, the reason sought to be put forth about the decision required to be taken by the Executive Council is also not acceptable when it was just the matter of filing the appeal. In fact, in the writ petition an affidavit was filed referring to Resolution No. 56 and 173 of Academic Council and Executive Council authorising for filing writ petition. When the writ petition was filed based on such authorisation and the stand of the Appellant, as the writ Petitioner was put forth and had failed in the writ petition, it cannot be accepted that the Appellant with all the wherewithal was unable to file the appeal, that too when the same Vice-Chancellor was available for six months after dismissal of the writ petition. Hence the reasons put forth cannot in our opinion constitute sufficient cause."

Xx xx xx xx

28. In the matter of condonation of delay and laches, the well accepted position is also that the accrued right of the opposite party cannot be lightly dealt with. In that regard, rather than taking note of the hardship that would be caused to the Respondent No. 13 as contended by the learned Senior Counsel, what is necessary to be taken note is the manner in which the Respondent No. 11 - DMRC has proceeded in the matter. The Respondent No. 11 - DMRC is engaged in providing the public transport and for the said purpose the Government through policy decision has granted approval to generate resources through property development and in that regard the development as earlier indicated, is taken up. Pursuant thereto the Respondent No. 11 has received a sum of Rs. 218.20 crores from Respondent No. 13 as far back as in the year 2008. The said amount as indicated is used for its projects providing metro rail service to the commuting public. In such circumstance, if at this stage the inordinate delay is condoned unmindful of the lackadaisical manner in which the Appellant has proceeded in the matter, it would also be contrary to public interest.

29. Therefore, taking into consideration all these aspects of the matter, we are of the opinion that not only the learned Single Judge was justified in holding that the writ petition inter alia is hit by

delay and laches but the decision of the Division Bench in dismissing the LPA on the ground of delay of 916 days is also justified and the orders do not call for interference.”

The sole ground taken for praying condonation of the delay is the negligence of the conducting counsel in taking steps at right time in complying with the order of the Court as well as unawareness on the part of the petitioner regarding the order passed by this Court in dismissing the writ petition for non-filing of requisites. When a query was made to the learned counsel for the petitioner as to whether any application has been filed before the Bar Council against the advocate who is stated to be negligent in his duties which resulted in the dismissal of the writ petition, the answer was in negative. Learned counsel for the opposite party as well as the learned Additional Government Advocate rightly brought to the notice of this Court that Sri Bidyadhar Mishra is a designated Senior Advocate of this Court and he regularly appears before this Court in different matters and therefore, the plea taken by the petitioner that Sri Mishra is residing at Bhubaneswar and not attending the Court for few years is nothing but a cock and bull story.

In the case of **Chennai Metropolitan Water Supply and Sewerage Board and others -Vrs.- T.T. Muralibabu**

reported in (2014) 4 Supreme Court Cases 108, it has been held as follows:-

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant-a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of

the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the Respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

7. When the petitioner has handed over the brief to his Advocate for filing the case in the High Court in 2006, it was expected of him to remain in contact with his advocate to know about the progress of the case. When the case was first taken up on 21.11.2006 and notice was directed to be issued, requisites

were not filed in time. Then the matter came up on board of the Court straight after nine years which goes a long way to show that the petitioner was not keeping in touch with his advocate to ascertain about the status of the case and therefore, it can be said that he was absolutely careless and negligent in pursuing his case. Nothing has been brought on record nor any averment has been taken to show that in between the passing of the first order i.e. dated 21.11.2006 till the passing of the next order i.e. 08.01.2016 and again till filing of the CMAPL petition, he was keeping regular contact with his counsel to know about the status of the case pending in this Court.

It is indubitably correct that the obligation of the party is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things as after engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. A party should not suffer for the inaction, negligence or other fault of the Advocate.

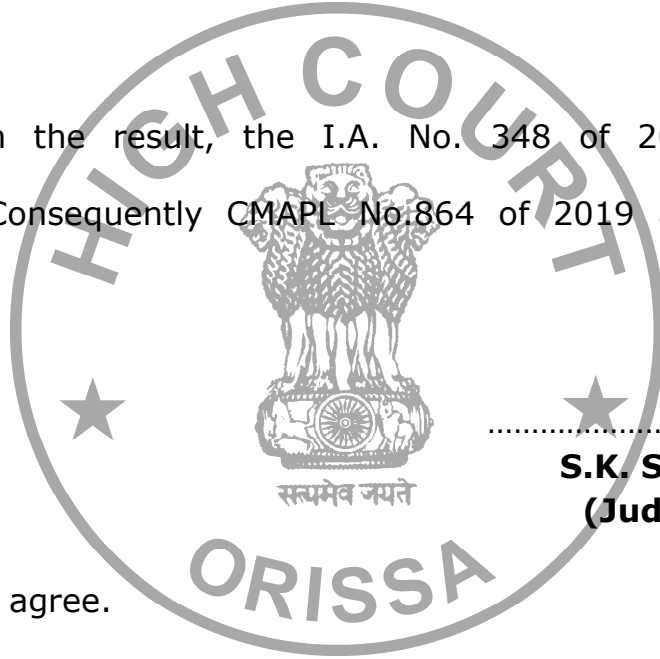
However, in the case in hand, the petitioner was not vigilant in pursuing the case with due diligence. As noted above, an order was passed on 21.11.2006 and notice was directed to be issued with a direction to file the requisites but that order was

not complied with by the counsel for the petitioner. It is very hard to believe that a hawk-eyed litigant would not put the slightest of labour to enquire about the status of the case till the next listing, which happened only after a gap of almost a decade. It is noteworthy that even when another order was passed by this Court on 08.01.2016 giving last chance to the counsel for the petitioner to file the requisites, the same was not paid heed to and surprisingly, the petitioner pleads that he did not even get clue of such order until 14.12.2019. Had the petitioner been alert to his rights which were at stake in the writ petition, it is unlikely that he would have slept over the matter for about four long years before discovering that his case has been dismissed for default.

It is very easy to change lawyer and to put blame on the earlier lawyer for his/her negligence, but the Court cannot turn a blind eye to the surrounding circumstances, eventualities and most importantly, the conducts of the party before it marches on to believe the allegations leveled by the party against his Advocate as a gospel truth. Moreover, the concerned lawyer has not been made as a party in this case and thus, it is not fair on our part to pass any order against the conduct of the lawyer without hearing him.

Therefore, we are of the humble view that delay of 1391 days in filing the CMAPL petition is inordinate and no sufficient cause has been shown by the petitioner in condoning the delay and the explanation offered by the petitioner is fanciful one and when the discretionary power in condoning the delay is to be exercised cautiously, otherwise, it would defeat the purpose and object of law of limitation and would result in injustice, we are not inclined to accept the explanation offered in the interim application for condoning the delay in filing the CMAPL.

8. In the result, the I.A. No. 348 of 2019 stands dismissed. Consequently CMAPL No.864 of 2019 also stands dismissed.



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S.K. Sahoo
(Judge)

S. Talapatra, C.J. I agree.

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Subasis Talapatra
(Chief Justice)