

(2011) 03 OHC CK 0010

In the Orissa High Court

Case No : Misc. Case No. 1878 of 2008 (Arising out of MACA No. 836 of 2008)

Ram Chandra Mishra and Others

APPELLANT

Vs

Niranjan Nayak and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Citation : (2011) 03 OHC CK 0010

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.S. Bhalla, J.—Heard learned Counsel for the Appellant.

2. Prayer made in the application is for condonation of delay of 736 days in filing the appeal.

3. It is incumbent on a person preferring an appeal u/s 173(1) of the Act to take all care to see that the appeal is filed within time and unless he shows "sufficient cause" which prevented him from preferring the appeal in time in spite of care and diligence, the appellate court will not be inclined to entertain an appeal preferred out of time. The satisfaction of the court under the Second proviso to Section 173(1) of the Code will naturally have to depend on the Appellant establishing that in spite of all care and diligence it was not possible for it to prefer the appeal in time. The Appellants are required to explain each day's delay. The discretion to condone the delay is to be exercised judicially, one is not to be swayed by sympathy or benevolence. Discretion can be exercised in favour of a person if sufficient cause is pointed out. In the instant case, the Appellants have put forward a reason by way of sufficient cause that they were not aware of the fact of disposal of the claim petition by the learned Tribunal. Moreover, the delay is to the tune 736 days in filing the appeal and the negligence, carelessness and want of means at the time on the part of the Appellants would be sufficient cause and in fact the Appellants have not taken steps which they

could have or should have taken. The question of existence of sufficient cause is one to be decided from the facts and circumstances of the particular case and it is difficult to define precisely the meaning of the words "sufficient cause" or "sufficient reason". In the present case, no satisfactory explanation has come forward and in the absence of sufficient cause, delay cannot be condoned.

4. In view of the above discussion, I do not find any substance or merits in this application for condoning the delay of 736 days in filing the appeal against the award passed by the learned Tribunal.

5. For the reasons stated above, the petition filed by the Appellants for condonation of delay of 736 days is dismissed. Accordingly, the appeal filed by the Appellants is dismissed being barred by time.

6. It is pity that main appeal is not being heard on merit seeing the conduct of the Appellants and thereby making a considerable delay of 736 days in filing the appeal.