IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 15th Oct.'14.

F.A.O. No. 139 of 2003.
C.M.A. No.312 of 2008.

[Arising out of the order dated 15.04.1998 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in Misc. Case No.357 of 1996, corresponding to T.S. No.61 of 1993.]

State of Orissa, Represented through
Special Secretary, G.A. Department,
Orissa Secretariat, Bhubaneswar, Dist. - Khurda.
... **Appellant in FAO**
& Petitioner in CMA.

-Versus-

1. Kabiraj Samantaray, aged about 58 years,
S/o. Late Dibya Singh Samantaray (Dead).
1(a) Radharani Samantaray, aged about 67 years,
W/o. Late Kabiraj Samantaray.
1(b) Karmabira Samantaray, aged about 45 years.
1(c) Chandra Sekhar Samantaray, aged about 30 years.
1(d) Prabira Samantaray, aged about 35 years.
Sl. Nos.1(b) to 1(d) are S/o. Late Kabiraj Samantaray.
1(e) Sujata Samantaray, aged about 38 years,

D/o. Late Kabiraj Samantaray,
W/o. Ranjeet Rout.

1(f) Binata Samantaray, aged about 32 years,
D/o. Late Kabiraj Samantaray,
W/o. Trinath Barik.
All of Gobinda Prasad, P.S. – Saheed Nagar,
P.O. – Rasulgarh, Bhubaneswar, Dist. – Khurda.

... **Respondents in FAO &**
Opposite Parties in CMA.

Counsel :

For Appellant/Petitioner : Shri R.P. Nanda (G.P.).
For Respondents/O.Ps. : Shri A. Mohanty & Associates.

Date of conclusion of argument : 14.10.2014.
Date of judgment : 15.10.2014.

J U D G M E N T

The captioned C.M.A. has been filed by the appellant for condonation of delay by virtue of the order dated 11.04.2013 passed by the Hon'ble High Court in W.P.(C) No.24267 of 2011, directing disposal of F.A.O. as expeditiously as possible. So, both CMA and FAO are taken up together for disposal by this common judgment. The order dated 15.04.1998 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in Misc. Case No.357 of 1996, arising out of T.S. No.61 of 1993, is assailed in this appeal.

2. Sans unnecessary details, facts which are essential for the purpose of this appeal are that appellant is none other

than the State of Orissa, who was the defendant in T.S. No.61 of 1993 before the trial Court, whereas respondents are legal heirs of the plaintiff. The plaintiff filed the suit before the lower Court for declaration of his occupancy right over the suit land measuring Ac.0.844 decimals under Unit-10 of Bhubaneswar Town. In that suit, though the State Government filed written statement, but it was decreed ex parte on 08.04.1996 due to non-appearance of the defendant on the date of hearing of the suit. After passing of the ex parte decree, an application under Order 9, Rule 13 of the C.P.C. read with section 151 of the C.P.C. was filed by the then Addl. Government Pleader, Bhubaneswar on behalf of the appellant being supported by an affidavit sworn by one Bramhananda Mohanty, Advocate's Clerk, and the said application was registered as Misc. Case No.357 of 1996. That Misc. Case was also dismissed on contest on 15.04.1998 by the learned Civil Judge (Jr. Division), Bhubaneswar. The appellant submitted that the then Addl. Government Pleader was duly engaged to contest the suit and the State of Orissa reposed faith and confidence on the said counsel to proceed with the matter with due diligence and promptitude. At no point of time, the Addl. Government Pleader intimated the State of Orissa as well as the General Administration Department about the progress of the suit and

also about the ex parte order dated 08.04.1996. It is further alleged, inter alia, that in Misc. Case No.357 of 1996, the then Addl. Government Pleader had taken the plea that due to transfer of the original suit to the Court of Addl. Munsif, Bhubaneswar, he could not follow up the suit record resulting its ex parte hearing. It is the further case of the appellant that for the first time, on 06.12.2003 the appellant got an information from the Hon'ble High Court in Writ Petition No.8234 of 2003 filed by the plaintiff that the plaintiff has sought for mutation of the Record of Right basing on the ex parte decree passed in T.S. No.61 of 1993. The plaintiff filed such Writ Petition seeking direction to the Tahasildar, Bhubaneswar to dispose of the mutation case. Thereafter, on 11.12.2013, the General Administration Department of the State Government along with the present Government Pleader took steps for inspection of the case records and after ascertaining about the above facts and non-intimation by the then Addl. Government Pleader, filed the present appeal together with the petition under section 5 of the Limitation Act, 1963. It is the bone of contention of the appellant that the facts of ex parte judgment in T.S. No.61 of 1993 and dismissal of Misc. Case No.357 of 1996 were not within the knowledge of the appellant, as at no point of time, the Addl.

Government Pleader intimated the State Government about the same. It is further averred by the appellant that the suit land is a valuable piece of Government land and the appellant, in order to protect the interest of the State Government, filed written statement and engaged the then Addl. Government Pleader to defend the case; but due to lack of prosecution by the then Addl. Government Pleader in the suit and in the Misc. Case, the appellant had to suffer. It was neither deliberate nor intentional on the part of the appellant. So, it is prayed to condone the delay and allow the appeal after hearing the parties.

3. It is the case of the respondents that plaintiff's father reclaimed the suit land, which is adjacent to their ancestral property, as he has been possessing the same since 1944. In the family arrangement, the properties allotted to plaintiff's brothers were sold; but the suit land, which was left out, was being possessed by the plaintiff. It is the further case of the respondents that the plaintiff has acquired the right of occupancy over the entire suit land having possessed the same since 1944. When the General Administration Department being the defendant tried to evict the plaintiff, he filed the suit. It is submitted by learned counsel for the respondents that in the suit the then Addl. Government Pleader appeared on behalf

of the defendant and filed written statement. According to him, after the suit was transferred on 22.08.1995 to the Court of the then Addl. Civil Judge (Jr. Division), Bhubaneswar, the defendant did not take any step. But, later, the then Addl. Government Pleader filed Memo of Appearance. Subsequently, on the date of hearing, the defendant remained absent, for which the matter was heard ex parte and disposed of. It is further submitted by learned counsel for the respondents that the then Addl. Government Pleader, for the reasons best known to him, did not take any step following which the suit was set ex parte. He further submitted that the then Addl. Government Pleader took steps to set aside the ex parte order by filing Misc. Case No.357 of 1996 under Order 9, Rule 13 of the C.P.C. That was also dismissed on the ground that there was delay in filing the petition for setting aside the ex parte decree and, as such, the Misc. Case was dismissed being barred by limitation. He vehemently opposed to allow the appeal and the petition stating that the State Government was well aware of every step in the above suit and Misc. Case and there was absolute laches on the part of the appellant to take steps, for which rightly the Misc. Case has been dismissed on contest. He further submitted that the present appeal is also barred by time being filed after a long period of more than five

years and seven months and the fact that the appellant was not aware of the proceeding is blatantly false. He submitted that the appeal does not deserve to be admitted because it is not maintainable being barred by time and there is no sufficient cause shown to condone the delay. So, he submitted to dismiss the petition filed under section 5 of the Limitation Act and the appeal as well.

4. Now, the following points are formulated for decision :

(i) Whether there is sufficient cause to condone the delay in filing the appeal ?

(ii) In the event delay is condoned, whether the appeal is liable to be allowed ?

Point No.(i) :

5. Before going to discuss the evidence on record, let me find out the position of law on this point. Both parties have submitted decisions on the point of limitation. Their Lordships of the Hon'ble Apex Court in the case of ***State of Haryana*** Vs. ***Chandra Mani and others*** **(AIR 1996 SC 1623)** have been pleased to observe at para-10 that :

"xxx xxx xxx

When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck

ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officer / agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considering delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Government conditions would be cognizant to and require adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal

machinery working through its officers or servants.

xxx xxx xxx".

6. With due respect to the above decision, I find the expression "sufficient cause" should be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. Equally, the State cannot be put on the same footing as an individual.

7. In the case of ***Oriental Aroma Chemical Industries Ltd.*** Vs. ***Gujarat Industrial Development Corporation and Anr.*** **[AIR 2010 SC (Supp) 697],** Their Lordships have been pleased to observe at para-8 that :

"xxx xxx xxx

The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 2 SCC 107 : *(AIR 1987 SC 1353),* N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 : *(AIR 1998 SC 3222 : 1998*

AIR SCW 3139) and Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106 : *(AIR 2001 SC 2582 : 2001 AIR SCW 2809).*

xxx xxx xxx".

8. With due respect to the said decision, I find that the case of ***State of Haryana*** Vs. ***Chandra Mani and others*** (supra) has been followed in this case; but the fact remains that the Law Department has got laches for which there was delay of four years. Similarly, Their Lordships in ***Office of the Chief Post Master General & Ors.*** Vs. ***Living Media India Ltd. & Anr.*** **(AIR 2012 SC 1506)**, have been pleased to follow the principles of law, as propounded in the case of ***State of Haryana*** Vs. ***Chandra Mani and others*** (supra).

9. In the case of ***Maniben Devraj Shah*** Vs. ***Municipal Corporation of Brihan Mumbai*** **(AIR 2012 SC 1629*),*** Their Lordships of the Hon'ble Apex Court have been pleased to observe at para-18 that :

"xxx xxx xxx

What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a

legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies / instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest".

10. With due respect to the said decision, I find that while construing section 5 of the Limitation Act, liberal approach is to be given, but where the State and its agencies are in utter negligence, the sympathy will not be bestowed and there cannot be condonation of delay for the public interest.

11. At the same time, in ***Esha Bhattacharjee*** Vs. ***Managing Committee of Raghunathpur Nafar Academy and others*** **[2013 (II) CLR (SC) - 967],** Their Lordships have been pleased to observe at paras-15 & 16 that :

"15. From the aforesaid authorities the principles that can be broadly be culled out are :

(i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be

applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay, but gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully

scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:-

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

12. With due respect to the above decision, I find that all the principles with regard to sufficient cause for condonation of delay have been culled out in the said decision. Now, bearing in mind all the aforesaid principles, let me find out whether the appellant has got sufficient cause for condonation of delay of more than five years and seven months

i.e. 2044 days, while permitting some acceptable latitude to the State Government.

13. On going through the petition under section 5 of the Limitation Act, it is found that the then Addl. Government Pleader was engaged on behalf of the State of Orissa to appear and contest the original suit; but he did not inform the General Administration Department about the progress of the suit and subsequent development with the result that the suit was decreed ex parte. The then Addl. Government Pleader also did not inform the General Administration Department about filing of the case on behalf of the State to set aside the ex parte decree. For the first time, the appellant came to know on 06.12.2003 when the State Government was directed to reply to the Writ Petition No.8234 of 2003 filed by the plaintiff in the Hon'ble High Court. Then, the present Government Pleader enquired into the matter and took steps by filing the appeal on 20.12.2003. This application has been filed with affidavit by the Addl. Land Officer, G.A. Department, Government of Orissa.

14. P.W.1, who has been examined on behalf of the petitioner, revealed that the then Addl. Government Pleader was duly engaged on behalf of the State to appear and contest the suit and, thereafter, he did not inform about the progress of the suit and Misc. Case arising therefrom. According to him,

for the first time, on 06.12.2003, the General Administration Department got an information through the letter issued from the office of Advocate General, Orissa that the plaintiff had filed a Writ Petition bearing No.8234 of 2003 before the Hon'ble High Court of Orissa seeking direction to the Tahasildar to dispose of the mutation case filed by them on the basis of ex parte decree passed in T.S. No.61 of 1993. He further stated that on 11.12.2013, the Government Pleader along with Addl. Government Advocate inspected the case records and came to know all the details. He further stated that due to lack of prosecution on the part of Addl. Government Pleader, the suit was set ex parte and also order was passed in Misc. Case No.357 of 1996. After coming to know about the matter, they processed the file, which took little time, after which appeal was filed with a petition to condone the delay. He also proved the letter of authorisation vide Ext.1, which shows that he has been authorised by the General Administration Department to depose in this case. He admitted that he has not personally verified the Court case records and whatever he is stating is out of his official knowledge from the records. He denied to the suggestion of learned counsel for the respondents that the General Administration Department was regularly in touch with the

then Addl. Government Pleader. He also stated that since the proceeding under Order 9, Rule 13 of the C.P.C. to set aside the ex parte decree was not within their knowledge, they could not have given any instructions to the then Addl. Government Pleader. There is no serious cross-examination to this witness. He has uttered the name of the then Addl. Government Pleader. In fact, he has also proved the letter dated 28/29.11.2003 of the then Addl. Government Advocate of the Office of Advocate General, which shows that on 06.12.2003, the Secretary to Government, General Administration Department, got details of this case from the Office of Advocate General. As a matter of fact, the LCR reveals that the Addl. Government Pleader was engaged in T.S. No.61 of 1993. At first, the Addl. Government Pleader appeared on 03.11.1993 and went on asking repeatedly for time to file written statement and, on a day subsequent thereto, due to non-filing of written statement, the defendant was set ex parte. But, again on 18.02.1995, ex parte order was set aside and written statement filed by him was accepted. On 22.08.1995, it appears that the case record was transferred to the Court of Shri S.K.Pattnaik, Addl. Civil Judge (Jr. Division), Bhubaneswar for disposal according to law. In the transferee Court, the defendant was set ex parte for not taking any step.

Later on the same day, the Addl. Government Pleader appeared and filed a petition to set aside the ex parte order. Thereafter, the matter was dragged for consideration of the said petition to set aside the ex parte order and then on 19.02.1996, since no step was taken on behalf of the defendant, the petition dated 04.11.1995 was rejected with the order that it is rejected as not pressed. Thereafter, ex parte hearing went on and ex parte decree was passed on 08.04.1996. On further scrutiny of the record, it appears that the suit was decreed ex parte and decree was drawn up on 07.12.1996. The then Addl. Government Pleader Mr. Hrudananda Routray filed the petition to restore T.S. No.3/61 of 1995/93 and it was supported by an affidavit of one Brahmananda Mohanty, who is the Advocate's Clerk of Mr. Routray. This affidavit could have been filed by the concerned Department. In that petition, the then Addl. Government Pleader has taken the plea that due to change of Government and a new panel being set up, Government files were being maintained in the residential office of the Government counsel and only on 06.12.1996, they could know about the ex parte judgment dated 08.04.1996. Since the landed property was very valuable, he filed the petition to set aside the order. Not only this, but also the concerned Advocate's Clerk

Brahmananda Mohanty was examined on behalf of the petitioner. It appears from his statement that he was looking after the case since October, 1995 on behalf of the petitioner. Since said Brahmananda Mohanty was attached to the then Addl. Government Pleader Hrudananda Routray as Advocate's Clerk and he was not the staff of General Administration Department, it is not understood as to how he was looking after the case on behalf of the petitioner, who is none other than the State Government. No where in his cross-examination, it has been suggested that the General Administration Department was very much informed by him. Be that as it may, the then learned Addl. Munsif, Bhubaneswar did not accept the plea of the State and passed the order, dismissing the Misc. Case.

15. From the above marathon discussions, it is found that in fact the then Addl. Government Pleader was conducting the case on behalf of the State Government; but there is no occasion to show that he has informed the General Administration Department about development of the case. More so, he has also not informed the General Administration Department to procure the attendance of departmental person for swearing affidavit and filing petition to set aside the ex parte decree and, on the other hand, his clerk was engaged to

swear the affidavit and to depose before the Court. So, the statement of P.W.1 in the C.M.A. is found to have been corroborated by such materials and there is no whisper from his cross-examination that the General Administration Department was aware of the development of the case. It is reiterated that for the first time, the General Administration Department came to know from the office of Advocate General that such suit has been set ex parte and the Misc. Case has already been dismissed on contest.

16. The respondents have tried to disprove the facts, as posed by the appellant to condone the delay. In their efforts, they have produced the certified copies of orders passed in Misc. Case No.2570/1999 pending before the then Tahasildar, Bhubaneswar vide Ext.A. From the above order-sheets dated 16.12.2000, it appears that on 26.08.2000, a letter was addressed by the Addl. Land Officer, General Administration Department, where the said Department has requested to provide copies of orders of the Civil Court in T.S. No.3/61 of 1995/93 and Misc. Case No.357 of 1996 and the plaint copy and pursuant to such request, the concerned Tahasildar asked the office to provide the same to the General Administration Department. Learned counsel for the respondents submitted that when the General Administration

Department was aware of such case in 2000, it cannot be said that they were not aware of such proceeding. Learned Government Pleader submitted that such copies were not received from the then Tahasildar. Subsequent order sheets only disclose about stereo-type orders being passed by the concerned Tahasildar that nothing has been heard from the General Administration Department and await. But, no step has been taken by the said Tahasildar to show whether any step has been taken by the petitioner to issue summons to the General Administration Department or any step being taken by the Tahasildar to issue summons to the General Administration Department and, finally, on 05.10.2002, an order was passed to write a letter to the Director of Estate fixing 15.11.2002; but that order was not complied. So, the order sheets, as available from the Tahasildar, Bhubaneswar, do not disclose that copies of orders in the concerned Title Suit and Misc. Case were sent to General Administration Department or the people of the said Department attended the Misc. Case. In such circumstances, it cannot be said that this Misc. Case has supplied the knowledge to the appellant about the outcome of T.S. No.61 of 1993 and Misc. Case No.357 of 1996. On the other hand, the respondents have failed to establish that the General Administration Department had the knowledge about

the status of the suit and Misc. Case much prior to the receipt of information from the office of Advocate General.

17. From the above discussion, it appears that due to laches of the then Addl. Government Pleader, the State Government in General Administration Department, who is the appellant in this case, could not have the information about ex parte decree in the suit and dismissal of the Misc. Case arising out of such suit. The then Addl. Government Pleader was engaged by the State Government. When the State Government and its officials are not coming to picture but the Addl. Government Pleader is coming to the scene, it cannot be said that there were laches with the concerned Department to make such delay in approaching the Court. It is well settled law that for the laches of lawyer, a party cannot be allowed to suffer. Since there is delay of more than five years and seven months, I am of the view that the evidence has been strictly assessed, of course, with acceptable liberty to the State Government in accordance with principles of law, as propounded by the Hon'ble Apex Court amplified in the foregoing paragraphs. Moreover, it is found that the suit land is a valuable immovable property located in the heart of Bhubaneswar town. So, considering all such aspects, I find that the appellant has proved sufficient cause, as required under

section 5 of the Limitation Act, for condonation of delay to bring this appeal. Hence, the delay is condoned and the appeal is maintainable.

Point No.(ii) :

18. The learned Addl. Civil Judge (Jr. Division), Bhubaneswar has dismissed the petition under Order 9, Rule 13 of the C.P.C. showing the same to be barred by limitation, without considering the merit of the petition. The evidence of P.W.1, examined in that Misc. Case, shows that he being Advocate's Clerk attached to the then Addl. Government Pleader was looking after the case. He further stated that on 04.11.1995, at the instance of Law Officer, the petitioner, he filed a petition for adjournment and, on that day, he and the petitioner could know that the petitioner was set ex parte and hence on 02.12.1995 the petitioner filed a petition to set aside the order. He further stated that the petition remained pending, but on 08.04.1996 ex parte order was passed. Again he has stated that on 06.12.1996 the petitioner submitted all the relevant documents relating to the case and the Misc. Case was filed on 07.12.1996. In cross-examination, he has admitted that his petition dated 02.12.1995 has no mention that for want of papers, they could not file the written statement. Again, he has stated that on 04.11.1995, the

petitioner appeared in the transferee Court. The plaintiff being the opposite party has only cross-examined P.W.1 without adducing any evidence to defeat the case of the petitioner. It is found that in the proceeding of the Court, there is no such fact forthcoming, as disclosed by P.W.1. P.W.1, who is the Advocate's Clerk of the concerned Addl. Government Pleader, was not authorised by the General Administration Department to depose any evidence and, as such, whatever he has adduced is based on his own particulars and such evidence also finds no corroboration from order-sheets of the Court. Besides, when he was looking after the case since 1995 as per his statement, it is not known how on 06.12.1996, the petitioner (General Administration Department) submitted all the relevant documents relating to the case, as he was not supposed to be the custodian of such documents. So, it is inferred that P.W.1 being the Advocate's Clerk has got this Misc. Case filed in a belated stage without having any authority from the concerned Department and the same was dismissed being barred by limitation. In such circumstances of the case, what could be the decision taken in this matter ? It is already observed in the aforesaid paragraphs that due to sheer laches of the counsel appearing for the State Government such delay has occurred, for which the reason of delay in filing the present appeal covers

up the delay with the same reasoning for filing the Misc. Case to set aside the ex parte decree. Hence, the order passed by the learned Civil Judge (Jr. Division), Bhubaneswar on this count cannot be sustained in law since without going into merit he has passed the order only basing on the point of limitation. As such, his order being bad in law is liable to be interfered with in this appeal. At the same time, it cannot be lost sight of that at a stroke of pen, the immovable property of a great worth of the State Government is going to be taken away. It is also to be kept in mind that the respondents have travelled and fought a strong battle with the State Government for the last good number of years for which they should be compensated while setting aside the impugned order. Hence ordered :

O R D E R

C.M.A. No.312 of 2008 and F.A.O. No.139 of 2003 are allowed on contest against the opposite parties-respondents and the order dated 15.04.1998 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in Misc. Case No.357 of 1996, corresponding to T.S. No.61 of 1993, is hereby set aside, but subject to payment of cost of Rs.1,000/- (Rupees One Thousand) to the respondents by the appellant within one month from the date of this order. In the event the impugned order in Misc. Case is set aside, T.S. No.61 of 1993

be restored to file.

Since this is a suit of the year 1993, the learned trial Court is directed to dispose of the same on merit and in accordance with law by the end of November, 2014 by giving opportunity to both parties on hearing afresh.

District Judge, Khurda
at Bhubaneswar.
15.10.2014.

Dictated, corrected by me and pronounced in the open Court this day the 15th October, 2014.

District Judge, Khurda
at Bhubaneswar.
15.10.2014.

List of witnesses examined for petitioner in C.M.A. No. 312 of 2008.

P.W.1 -- Arup Kumar Sahoo.

List of witnesses examined for opposite parties in C.M.A. No.312 of 2008.

Nil.

List of documents admitted in evidence for petitioner in C.M.A. No.312 of 2008.

Ext.1 -- Authorisation letter.

List of documents admitted in evidence for opposite parties in C.M.A. No.312 of 2008.

Ext.A -- Amin's Report and copies of order-sheets in M.C. No.2570 of 1999 &

Ext.B -- Copies of Order-sheets in T.S. No.61 of 1993.

District Judge, Khurda

at Bhubaneswar.
15.10.2014.