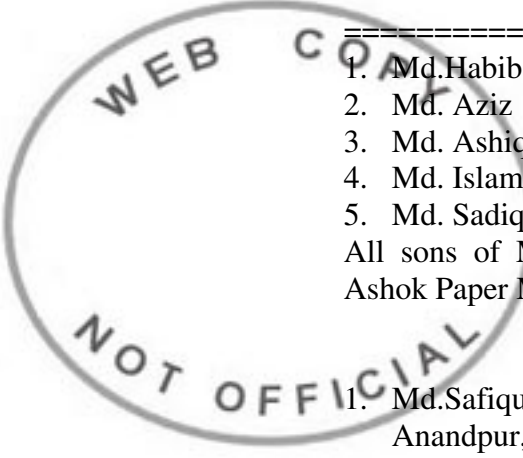


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6755 of 2011

- 
1. Md.Habib
 2. Md. Aziz
 3. Md. Ashique
 4. Md. Islam
 5. Md. Sadique

All sons of Md. Haleem, residents of village Akbarpur, P.O.- Anandpur, P.s.- Ashok Paper Mill, District- Darbhanga.

.... Petitioner/s

Versus

1. Md.Safique, son of late Shekhawat, resident of village Akbarpur, P.O.- Anandpur, P.s.- Ashok Paper Mill, District- Darbhanga.
2. Zubaida Khatoon, wife of Md. Samiullah and D/o- Md. Haleem, resident of village Badarbanna, P.S.- Bahera, District- Darbhanga.
3. Sufaida Khatoon, wife of Md. Sageer and D/o- Md. Haleem, resident of village Chandih, P.S.- Bahadurpur, District- Darbhanga.
4. Rahman Kujra @ Biltu Kujra, son of late Nathuni Kujra, resident of village Akbarpur, P.O.- Anandpur, P.s.- Ashok Paper Mill, District- Darbhanga

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava

For the Respondent/s : Mr. Shambhu Sharan Singh

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 02-09-2015

Heard both sides.

The writ application is filed aggrieved by the order dated 18.2.2011 passed by the learned Munsif-II, Darbhanga in Title Suit No. 36 of 2010 whereby the petition filed by the plaintiffs for not accepting the written statement filed on behalf of the defendant 1st party (respondent 1st party herein) was considered and rejected finding the application frivolous. The Court also imposed cost to be deposited by the plaintiffs with the District Legal Services Authority. For better appreciation, this Court would extract hereinbelow the relevant part of

the order dated 18.2.2011:-



“Yet another point of consideration is that on what grounds the petition is preferred before this court? Taking this fact in account, it is emphatically clear that it points out the issue which is already over i.e. grant of time, now can this objection be heard by this court, if it is in what capacity the jurisdiction would be exercised? I am of the opinion that such illegality as alleged, can only be seen by the revisional court and if this court takes up the adjudication it would amount to revising its own order and correcting its illegality in revisional capacity, which the law does not permit and at the most what the code permits that this court can recall its own order if the same is found to be illegal and occurred due to mistake. Can the order of grant of time be recalled without prejudice to the other party? Answer is a ‘No’. Further the grant of time by the court, assuming but not conceding, if was beyond the provisions of law the same could have been raised before award/acceptance of the cost and/or immediately after the court exercised the jurisdiction adjudicating in a way which according to the plaintiff was against the provisions of law. Submission of the Ld. Counsel for the plaintiff that the cost is for adjournment is not sustainable looking to the fact that it was for the filing of w.s. thus if the objection of the plaintiff not taken as sustained and time granted and the same if not taken up by the plaintiff before the higher forums would be deemed to have been acquiesced. Before I sum up the final orders on the petition, it is essential to mention that the parties before the court are to conduct in such a manner that the court is cooperated in the sense that its time and energy is not wasted and utilized for the purpose of administration of justice. The court fee is paid to the State for providing a service of rendering justice but the same be done in a judicious manner keeping in mind that the resource in form of the time and energy of the court, is utilized to the optimum, because it is the State exchequer which goes to loss if the time and energy of the courts are met in futile exercise.”

Contention of the petitioners is that under Order VIII Rule 1 of

the Code of Civil Procedure (for short ‘the Code’), the written

statement ought to have been filed within 90 days of the service of the summons on the defendant. The same was filed by the defendant 1st party on 4.2.2011. The trial Court, therefore, acted illegally in accepting the written statement.

Order VIII Rule 1 of the Code reads as under:-

“1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

From the impugned order as well as the submission of the defendant-respondent(s), it appears that the suit was filed on 28.06.2010 on which the Office reported on 2.7.2010 and thereafter the suit was admitted on 3.7.2010. Summons was issued on 7.8.2010. Defendant 3rd party appeared with a prayer to grant time to file written statement. A petition was filed on behalf of the plaintiffs that as one of the plaintiff(s) had expired and, as such, his name be deleted. Both the prayers were allowed by the Court. The defendant 3rd party filed written statement which was accepted. The defendant 2nd party appeared and sought time to file written statement which was allowed by the Presiding Officer. Insofar as the defendant 1st set is concerned, after publication of the notice, he appeared on 24.11.2010 for the first



time in the suit and prayed for a direction for making over copy of the plaint and also for time to file written statement. Next date fixed was 29.12.2010. On that day, the Presiding Officer was on leave. However, on time petition(s) filed by the defendant 1st and 2nd party, next date was fixed on 2.2.2011. On 2.2.2011, on the request of the defendant 1st and 3rd party to adjourn the case which was allowed on imposing cost fixing 4.2.2011 directing the defendant 1st party and also defendant 2nd party to file written statement(s) before the next date. On 4.2.2011, the written statement was filed by the contesting defendant no. 1 which was accepted. The Presiding Officer in these factual background appreciated the application filed by the plaintiffs objecting to the acceptance of the written statement filed by the defendant no. 1-respondent only which, according to the respondent, was filed well within the expiry of 90 days. The Court in the impugned order took the view that if at all the petitioners were aggrieved by the order dated 2.2.2011 permitting the defendant 1st party to file written statement, they could have assailed the order in revision or approached the higher Court against the said order whereby time was granted till 4.2.2011 to file written statement on imposition of cost. Having received the cost so imposed, the petition was filed which was held to be completely unjustified and rejected with cost.

In my considered view, the order passed by the Munsif-II, Darbhanga in Title Suit No. 36 of 2010 does not suffer from any perversity calling for interference.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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