

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 40 OF 2013

1. Sri Nishu Nama,
S/O. Lt. Debendra Nama,
of Badharghat, Sripalli,
P.S.-Amtali,
District:-West Tripura.
2. Sri Raj Kumar Biswas,
S/O. Lt. Roy Haran Biswas,
of 2 No. Goutam Nagar,
P.S.-Bishalgarh,
District:- Sepahijala Tripura.

..... **Defendant Petitioners.**

- V e r s u s -

1. Smt. Manju Saha,
W/O. Lt. Rakhal Ch. Saha,
 2. Sri Amalesh Saha,
 3. Sri Liton Saha,
- Both are sons of Lt. Rakhal Ch. Saha,
of No.1 Goutam Nagar,
P.S.-Bishalgarh,
District:- Sepahijala Tripura.

..... **Plaintiff Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioners : Mr. D.R. Choudhury,
Advocate,
Mr. D. Deb, Advocate.

For the respondents : Mr. K.N. Bhattacharji,
Sr. Advocate,
Mr. S. Pandit, Advocate.

Date of hearing and : 22.06.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This petition under Article 227 of the Constitution of India is directed against the order dated 04.4.2013 passed by the learned Civil Judge (Jr. Division), Bishalgarh, West Tripura in case No.T.S.05 of 2012 whereby the learned trial Court has refused to accept the written statement filed by the defendants only on the ground that the same was not filed within the statutory period of 90 days.

2. The petitioners herein were defendants No.1 and 2 before the trial Court. The suit was filed by the plaintiff-respondents. The petitioner No.1 who is serving in the BSF was posted outside the State of Tripura at that time. Summons were received by his wife on 11.7.2012. As far as petitioner No.2 is concerned, summons were served upon his son on 06.8.2012 but there is no report that the son and he are residing together. Most importantly, on 09.8.2012 the learned trial Court after perusal of the service reports came to the conclusion that it was not satisfied that service had been effected properly and directed that fresh summons be issued and the case was fixed on 04.10.2012. In fact, no steps were taken pursuant to the order dated 09.8.2012. On 04.10.2012 the petitioners having come to know about the suit having been filed appeared in Court through counsel and prayed for time to file written statement. Time was granted upto 01.12.2012 and again time was prayed but it was rejected on the

ground that the time prayer stands rejected as the statutory period for filing W/S has elapsed.

3. In the order of 01.12.2012 I find that a portion of the order has been erased with a whitener. Something else has been written on top and even more shockingly something has obviously been added at a later stage in a different pen and ink. The words "as the statutory period for filing W/S has elapsed" have been added in a separate ink and obviously they must have been written at a later stage. Thereafter, on 05.01.2013 the written statement was filed with an application which has been rejected by the impugned order. It appears that the learned Civil Judge did not even consider his earlier order dated 09.8.2012 whereby he had himself held that there was no proper service on the defendants on 11.7.2012 and 06.8.2012. Therefore, I fail to understand how could he have taken these dates into consideration while considering the date of service. Date of service means proper date of service. The only date of service which could be taken into consideration in this case was 04.10.2012 when the petitioners had appeared in Court and as such, I find that the order passed by the learned trial Court is totally illegal. The same is accordingly set aside.

4. The written statement filed by the petitioners is ordered to be taken on record. The plaintiff-respondents are granted 4(four) weeks time to file reply, if any, to the written

statement and thereafter, the Court below shall deal with the matter in accordance with law.

5. The revision petition is disposed of in the aforesaid terms.

6. Send down the lower court records forthwith.

CHIEF JUSTICE