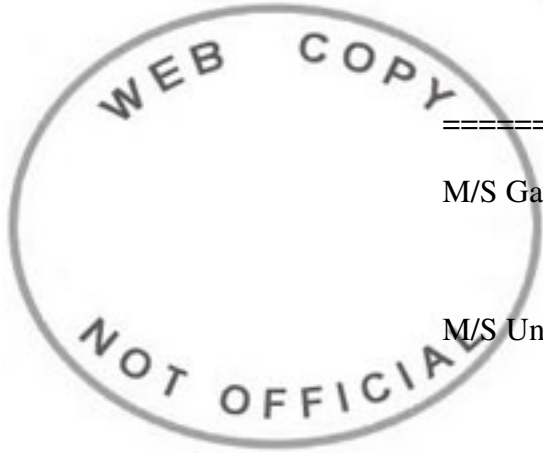


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3224 of 2014



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M/S Ganpati Services

.... Petitioner/s

Versus

M/S Universal Digital Connect Ltd. & Anr.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akash Chaturvedi

For the Respondent/s : Mr. Alok Kumar Agrawal

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 08-01-2016 Heard the learned counsel for the petitioner and the learned counsel for the respondent No.2.

This application under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner against the order dated 06.12.2013 passed by the learned Subordinate Judge-II, Patna in Title Suit No. 97 of 2011 whereby the learned Court below has accepted the written statement filed by the defendant-respondent No.1 in the aforesaid suit.



The learned counsel for the petitioner submitted that the defendant No.1 had appeared on 28.07.2011 but the written statement was filed on 25.11.2011. However according to the learned counsel, the defendant no.1 had got the knowledge of the suit on 07.04.2011 when the notice in injunction matter was issued on him along with the summons of the suit. Subsequently, on 19.06.2011, the plaintiff filed application under Order 8 Rule 10 C.P.C. for not to accept the written statement filed by the defendant no.1 because the defendant no.1 has not filed any application praying for condoning the delay. Subsequent thereto defendant no.1 filed an application and the Court below by the impugned order accepted the written application filed by the defendant.

The learned counsel further relying on the decision of the Supreme Court in the case of *Md. Yusuf Vrs. Faij Mohammad 2009 volume 3 SC Case 513* submitted that 'without assigning any reason, the written statement should not have been accepted by the Court below particularly when the written statement was filed after about 8 months.

On the other hand, the learned counsel for the respondent no.2 submitted that in fact, the defendant no.1 had appeared on

28.07.2011 and the written statement was filed on 25.11.2011. Therefore, there is no question of delay of about 8 months in this case arises.

Perused the order passed by the Court below. It appears that the defendant no.1 appeared in the case on 28.07.2011 and the written statement has been filed by him on 25.11.2011. It appears that application was also filed for condoning the delay on the ground that because of illness of the Advocate, there is delay in filing the written statement.

So far the decision relied upon by the learned counsel for the petitioner is concerned, it appears that in that case, there was delay about 3 years. However, the Supreme Court has also held in the Kailash case that “the proviso to order 8 Rule 1 C.P.C. is directory but the Supreme Court in no uncertain terms stated that defendant may be permitted to file written statement after the expiry of period of 90 days only in exceptional circumstances.” Now therefore, this provision, i.e proviso to Order 8 Rule 1 C.P.C. has already been held by the Supreme Court to be directly. To file the written statement after 90 days and acceptance thereof, after the said period is dependant on the facts of each case, there cannot be any straitjacket formula that in a particular situation the written

statement should not be accepted and in such particular fact, the written statement should be accepted. In the present case as stated above the defendant no.1 appeared on 28.07.2011 and the written statement was filed on 25.11.2011. Therefore, there is delay of about only one month. The Court below considered this fact and thereafter held that there is delay and 500/- rupees has been allowed as cost and the ground stated to be illness. In such circumstances, the impugned order cannot be interfered with in supervisory jurisdiction under Article 227 of the Constitution of India.

Thus this writ application is dismissed.

(Mungeshwar Sahoo, J)

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