

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8118 of 2014

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Jalil Ahamad & Anr

.... Petitioner/s

Versus

Rajendra Seth

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Pandey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 24-02-2016

Heard learned counsel, Mr. Rajni Kant Pandey

appearing for the petitioner.

2. By the impugned order dated 26.07.2013, the learned Munsif, Kaimur at Bhabua in T.S. No. 227 of 2000/153 of 2009 refused to accept the written statement filed by the petitioners along with application.

2. From perusal of the impugned order, it appears that the court below found that the petitioners appeared in the case in the year 2000 itself and in spite of sufficient opportunity granted to him, he did not file written statement, therefore, they were debarred from filing written statement on 16.04.2011. Thereafter, again they filed the application for permission to file written statement on 20.12.2012 and, therefore, the application filed by the petitioners was rejected.

4. The only ground raised by the petitioners is that there was heart attack and, therefore, the petitioners could not file the written statement. The application filed by the petitioners is annexure-1. Except this statement, which can very well turned as bald statement, there is nothing on record to show that in fact there was any heart attack and ever the petitioner was treated by the doctor.

5. The Hon'ble Supreme Court in the case of *Mohammed Yusuf Versus Faij Mohammad and Others* reported in **2009 (3) SCC 513** has held that no doubt Order 8 Rule 1 proviso is directory but the defendants may be appeared to file written statement after the expiry of period of 90 days only in exceptional situations. The Hon'ble Supreme Court further held that the supervisory jurisdiction under Article 227 can be exercised by the High Court on limited grounds, if the order is illegal and there is irregularity and there is procedural impropriety. It appears that in the case before the Supreme Court there was delay of three years only. The trial court refused to accept the written statement. The revisional court confirmed the order. The High Court in exercise of jurisdiction under Article 227 set aside the order passed by the trial court and the revisional court and accepted the written statement. The order of the High Court was

set aside by the Supreme Court holding that the High Court cannot exercise jurisdiction if there is no illegality, irrationality or any procedural impropriety.

6. In the present case delay is not either of three year, four year, five year or seven years but , it is more than 10 year and the only explanation is that there was heart attack that too without any basis. The court below has taken all the facts into notice and, therefore, the order passed by the court below cannot be said to be either illegal or irrational or there is procedural impropriety. Therefore 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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