

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6225 of 2015**

Most. Ram Dulari Devi & Ors

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Ashutosh Jha

For the Respondent/s : Mr. Uma Shankar- Gp4

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**  
**ORAL ORDER**

- 2      25-02-2016      1.      Heard the learned counsel, Mr. Ashutosh Jha, for the petitioner.
2.      By the impugned order dated 28.01.2015, the learned Sub Judge, Madhepura has recalled the order debarring the respondents from filing the written statement in Title Suit No.129 of 2010 and accepted the written statement filed by the defendant respondent.
3.      It appears that the order debarring the respondent from filing the written statement was passed on 16.08.2011. The written statement was filed on 17.10.2011. By the impugned order, the Court below allowed the application filed by the respondent and recalled the order debarring the respondent from filing the written statement on payment of cost of Rs.500/-.
4.      The Hon'ble Supreme Court in the case of *Sandeep*

*Thapar Vs. SME Technologies (P) Ltd. (2014) 2 SCC 302* has considered the various decision in the case of *Kailash Vs. Nanhku (2005)4 SCC 480* and held that ‘**though the language of the Proviso to Rule 1 of Order 8 of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 of the CPC is not completely taken away.**’ Therefore, the Court has the jurisdiction in special circumstances to recall the order and in the present case the respondents were appeared on 16.08.2011 and written statement was field on 17.10.2011. In such circumstances when the Court below has exercise the jurisdiction vested in it for doing justice between the parities, there is no question of any interference in supervisory jurisdiction arises.

**5.** Thus, this writ application is dismissed.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

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