

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.174 of 2016**

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Binod Kumar & Anr

.... Appellant/s

Versus

Pramod Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Kumar Soni

For the Respondent/s : Mr.

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

2 17-05-2016

The learned counsel for the petitioners submitted that he may be permitted to file recall application for recall of the order dated 16.04.2016 passed by Sub Judge XIV, Vaishali at Hajipur in Partition Suit No.835 of 2013 and on that ground, he seeks permission to withdraw this writ application.

It appears that the petitioner has directly filed the application before the High Court against the order whereby the petitioners have been debarred from filing the written statement.

In my opinion, therefore, the facts which are being alleged by the petitioners cannot be considered for the first time by the supervisory court while exercising jurisdiction under Article 227 of the Constitution of India.

I, therefore, direct the petitioners to approach the Court below by filing application explaining the delay for not filing the written statement within the period prescribed under Order VIII

Rule 1 C.P.C. If such application is filed, the Court below shall decide the same according to law laid down by the Hon'ble Supreme Court in (2005) 4 Supreme Court Cases 480 and (2012) 7 Supreme Court Cases 738.

Accordingly, the writ application is permitted to be withdrawn with the aforesaid direction.

Thus, this writ application is disposed of.

(Mungeshwar Sahoo, J)

Saurabh/-

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