

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.189 of 2016**

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Gyan Infra Build Pvt. Ltd. & Anr

.... Appellant/s

Versus

Smt. Mamta Sinha @ Rupam & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amrendra Narayan Rai

For the Respondent/s : Mr.

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Dated : 17th day of August, 2016

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV O R D E R

- 2 17-08-2016 **1.** I have already heard the learned counsel, Mr. S. K. Verma, for the petitioner and the learned counsel, Mr. Mritunjay Kumar on behalf of the respondent No.1.
- 2.** The petitioners who are defendant No.18 and 19 in Title Suit No.545 of 2009 filed an application for recall of the order dt.11.09.2015 whereby petitioners were debarred from filing the written statement. The learned Sub Judge II, Patna by the part of the impugned order dt.31.3.2016 rejected the application considering the conduct of the petitioner and held that the petitioners are trying to delay the disposal of the suit filed by the

plaintiff respondent for partition by playing hide and seek game.

3. The learned counsel, Mr. S. K. Verma, for the petitioner submitted that the petitioners could not file the written statement within the period prescribed or granted by the Court because copy of the plaint was never served by the plaintiff in spite of direction of the Court. However, the learned counsel submitted that the petitioners are ready to compensate the plaintiff respondent for delay and the negligence, if attributable to the petitioners. But opportunity should be granted to the petitioner to contest the suit.

4. On the other hand, the learned counsel for the plaintiff respondent submitted that the petitioners and defendant respondent are in possession of the suit property, therefore, in spite of service of notice, the others have not appeared. These two petitioners appeared but no written statements were filed on the ground which is not available to them. According to the learned counsel, as directed by the trial Court, the copy of the plaint was served on the Advocate of the petitioners but he refused to receive the same, therefore, copy of the plaint was filed in the suit in the Court below. The petitioners were appearing on each and every date but they neither received the copy of plaint nor filed written statement, therefore, the learned Court below has rightly debarred them from



filing written statement. The plaintiff respondent is residing at Bangalore. The defendant petitioners and defendants respondents are in possession of the property, as such they are adopting dilatory tactics on technical and on frivolous and vexatious grounds with a view to harass the plaintiff who comes to the Court from Bangalore on each and every date. If the order is set aside and the petitioners are allowed to contest then subsequently, other defendant will come one by one and shall seek adjournments for filing written statement then there will be another round of litigation and, thereafter same thing will be repeated by the other defendants and it will cause delay in disposal of the suit which will greatly prejudice the plaintiff respondent who is lady. The petitioners and respondents are enjoying the suit property the value of which is fifty lakhs. Moreover, the plaintiff has already examined one witness in the case and, thereafter they have filed this application. If cost is awarded then the cost must be exemplary cost and real cost incurred by the plaintiffs who attains the Court from Bangalore by air way.

5. The Hon'ble Supreme Court in the case of *Sandeep Thapar Vs. S.M.E. Technology Pvt. Ltd. 2014(2)PLJR 284 S.C.* has held that **'the provision as contained under Order 8 Rule 1 CPC is not mandatory. The Court has the power to extend**

time for filing written statement beyond time schedule and this power of the Court is not taken away but the extension of time is permissible not in a routine manner, but only if it was needed to be given in exceptional cases so as to prevent grave injustice and for that cost may be awarded.

6. In the present case, admitted fact is that if the petitioners are not granted opportunity to file written statement, then there will be uncontested decree and that will be injustice to the defendant. But at the same time, it must be seen that the petitioners are trying to delay the matter and the reason appears to be writ large as they are enjoying the suit property.

7. From perusal of the impugned order, it appears that the Court below also recorded clear finding that the defendant No.18 and 19, i.e., present petitioners were regularly appearing in the Court and were having full knowledge about the status of the case and they were admittedly aware that the copy of the plaint has been filed and is available on record for their use but in order to delay the proceeding of the case, they played hide and seek game and deliberately did not receive the copy of the plaint with a view to not to file written statement. The Court below also considered that the advocate of the petitioner refused to receive the copy of

the plaint.

8. Admittedly, the petitioners appeared on 5.9.2014 and they filed application for direction to the plaintiff to serve copy of the plaint. Ultimately, on 11.09.2015 they were debarred from filing written statement. After four months, this recall application was filed. The petitioners could have filed the recall application immediately after receiving the copy from the record but instead of doing so, they waited for four months which is not a small period. The ground taken by the petitioner for not filing written statement is not acceptable as it is not the law that time shall be counted from the date of service of copy of plaint by plaintiff and, therefore, the Court below has also not accepted the explanation. All these grounds clearly indicate that the petitioners are taking undue advantage and are abusing the process of the Court only with a view to harass the lady plaintiff who resides outside Bihar. Not only this, the petitioners are also wasting the time of the Court for their benefit as they are in possession of the property. The approach of the petitioner is not bonafide. To show their bonafide, they could have obtained the certified copy of plaint but they even did not receive the copy of plaint filed by plaintiff for the petitioners. In fact they are purchasing time.

9. The Hon'ble Supreme Court in the case of *Ram Rameshwari Devi Vs. Nirmalal Devi (2011)8 SCC 249* has given guidelines for shortening the civil litigation vide paragraph 52(c). The Hon'ble Supreme Court held that **'imposition of actual, realistic or proper cost and / or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigant. Imposition of heavy costs would also control unnecessary adjournments by the parties.'** At paragraph 54, the Hon'ble Supreme Court has held that **'while imposing cost, we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different Courts. We have to also broadly take into consideration the prevalent fees structures of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing , photocopy, court fee etc.'** At paragraph 55, again it has been held **'the other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various Courts.'**

10. It will not be out of place to mention here that the facts before the Supreme Court is no doubt different but the law laid down can be applied in the present case. In that case before the Supreme Court, suit was disposed of and the Supreme Court considered how the defendant dragged the litigation for decades. Therefore, the delaying tactics which is being adopted by the party for getting benefit should be dealt with strongly from the very beginning by the Court so that it will be a lesson to others and in future the same dilatory tactics for the purpose of getting benefit and harassing the other party by abusing the process of Court would not be adopted. Unless this message is given to the litigant who are trying to misuse the process of Court, the disposal of civil cases cannot be shortened and wrong door will always try to harass the other helpless litigant. The Court cannot be a silent spectator and dance at the instance of a litigant who is misusing the process of Court. This case is one of such instance. The plaintiff is lady who attains the Court by air way from Bangalore. The petitioners are in possession of the property of fifty lakhs (suit value is fifty lakhs) and they are trying to abuse the process of Court on technical ground, i.e., it is not believable that the Advocate could have refused to accept the copy of plaint. No explanation is given as to why they did not receive the copy of



plaint from the record. The conduct of the petitioners is not above board. They spent the time and dragged the case for more than one and half year by taking various pleas which do not show their bonafide. Their approach to Court is not with clean hand. The Courts of law are meant for imparting justice between the parties. Many times unscrupulous persons find the Court process a convenient lever to retain the illegal-gain indefinitely. The Courts have the jurisdiction to deal with these situation for doing justice and while administering justice, it should not be forgotten that for doing justice to one party injustice be done to other party. The balance should be maintained. So far awarding cost is concerned, it is not the law that it should be awarded only at the time of disposal of suit. Therefore, the Court must see that no litigant is playing hide and seek game and is misusing the process of Court and harassing the other party with a view to delay the civil proceeding but at the same time, the fundamental rules of Code of Civil Procedure should not be violated to shorten the litigation.

11. In view of the above peculiar facts and circumstances of the case, the petitioner must pay cost, therefore, I direct the petitioners to deposit cost of Rs.25,000/- in the Court below within one month along with written statement. If this condition is not fulfilled, i.e., cost is not deposited within one month and written

statement is not filed, they will not be allowed to file written statement. In no case, the time shall be extended for filing written statement. If the cost is deposited, the plaintiff respondent shall withdraw the same from the Court below.

12. With this observation, the order of the Court below refusing to recall the order debarring the petitioners and the original order is hereby modified as indicated above and this Civil Misc. application is disposed of.

(Mungeshwar Sahoo, J)

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