

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3494 of 2014

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Damodar Choudhary

.... Petitioner/s

Versus

Shekh Jamil

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Karuna Kant Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 25-01-2016

Heard the learned counsel for the petitioner and the
learned counsel for the plaintiff-respondent.

Although, this application under Article 227 of the
Constitution of India has been filed by the defendant-petitioner
against the order dated 05.10.2012 passed by the learned Munsif,
Supaul in Title Suit No.2 of 2012, the learned counsel for the
petitioner at the time of hearing, submitted that in this writ
application he may also be permitted to assail the subsequent order
dated 30.09.2013 whereby the application filed by the petitioner to
recall the order dated 05.10.2012 has been rejected.

The learned counsel for the petitioner submitted that
because of some unavoidable circumstances, the written statement
could not be filed by the petitioner. He appeared in the suit on
24.02.2012 but he was debarred from filing the written statement
on 05.10.2012 although, prayer was made for adjournment for



filing written statement. The petitioner filed application assigning reason for the grant of time to file written statement. The Court below rejected the application and thereafter the petitioner filed recall application which has been rejected by the Court below without considering the fact that still the date of order dated 05.10.2012, issues were not even framed. The learned counsel relying on the decision of the Supreme Court in the case of **Sandeep Thapar v. SME Technology Private Limited, 2014(2) PLJR 284(SC)** submitted that the petitioner is ready to compensate the other side and, therefore, for ends of justice, the order may be set aside and the petitioner may be permitted to file written statement. According to the learned counsel, written statement had already been filed, therefore, the same may be accepted.

It is admitted fact that 90 days expired on 24.05.2012. The petitioner did not file the written statement subsequently also, therefore, the Court below has rejected the time application and debarred the petitioner from filing written statement. Considering the fact that there is only a meager delay of about 3 months and odd, I hereby direct the petitioner to deposit a cost of Rs.10,000/- to the plaintiff-respondent in the Court below within one month from today. If such cost is deposited, the plaintiff-respondent shall

be at liberty to withdraw or the Court may pay the same to the plaintiff-respondent. The Court below shall thereafter proceed to decide the suit on merit. The order dated 05.10.2012 and the subsequent order whereby the application for recall has been rejected are hereby set aside.

Thus, this writ application is allowed.

(Mungeshwar Sahoo, J)

Saurabh/-

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