

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15898 of 2014

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Hareram Mahto

.... Petitioner/s

Versus

Mostt. Laxmi Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nafisuzzoha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 02-02-2016

Heard the learned counsel Mr. Narendra Kumar for
the petitioner.

This application under Article 227 of the Constitution of India has been filed by the defendant No.1-petitioner against the order dated 18.07.2014 passed by Sub-Judge-I, Madhepura in Title Suit No. 237 of 2010 whereby the Court below rejected the application filed by the petitioner to accept the written statement after condoning the delay.

Perused the order passed by the Court below. All the points that is raised before this Court has been considered by the Court below and thereafter, reasoned order has been passed assigning the reason that the petitioner has not explained the delay and, therefore, written statement cannot be accepted and accordingly, rejected the application.

Admittedly the petitioner appeared on 20.04.2011. For the first time on 28.02.2014 the written statement was filed by the

petitioner and the explanation given before the Court below is that to earn his livelihood he was out of Bihar and that he had instructed the advocate. The Court below assigning reason has not believed this explanation, the delay is 3 years delay.

The Hon'ble Supreme Court in the Case of *Mohammed Yusuf Vrs. Faij Mohammad 2009 (3) SCC 513* has held that it is true that procedure is the handmaid of justice. The Court must always be anxious to do justice and to prevent victories by way of technical knockouts. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. It is also held that in the Case of *Kailash Vrs. Nanhku 2005 (4) SCC 480 (480)* it has been held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the Court, in appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was also held that the extension of time beyond 90 days was not automatic and that the Court, for reasons to be recorded had to be satisfied that there was sufficient justification.

In the present case, as stated above, the Court below assigned reasons for its non-satisfaction. It may be mentioned here

that in that case before Supreme Court there was delay of three years in filing written statement. The trial Court rejected the application for the acceptance of the written statement. The High Court allowed the writ application and set aside the order passed by the trial Court and also the revisional Court which has also confirmed the order passed by the trial Court. The Hon'ble Supreme Court held that the jurisdiction of High Court under Article 226 and 227 of the Constitution of India is limited. It could have set aside the orders passed by the learned trial Court and the revisional Court only on limited ground namely, illegality, irrationality and procedural impropriety.

In view the above settled position it cannot be said that the order passed by the trial Court is illegal, irrational or that it has committed any procedural impropriety. In the aforesaid decision the Supreme Court set aside the order passed by the High Court directing to accept written statement. Therefore, in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the impugned order cannot be interfered with.

Thus this writ application is dismissed.

(Mungeshwar Sahoo, J)

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