

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5910 of 2015

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Misri Lal Ram & Ors

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gopal Kumar Jha

For the Respondent/s : Mr. Ritesh Kumar- Sc33

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 28-01-2016

Heard the learned counsel, Mr. Karuna Kant Jha for the petitioners and learned A.C. to S.C.33 for the State on I.A. No.8325 of 2015. At the time of hearing of this I.A., on the prayer of the learned counsel for both the parties, I heard the writ application itself on merit in admission matter.

By the impugned order dated 04.02.2015, the learned Sub Judge I, Supaul accepted the written statement filed by the defendant Nos.3 to 5 on payment of cost of Rs.500 in Title Suit No.27 of 2006.

The learned counsel for the petitioners submitted that earlier these defendants appeared on 30.09.2013 and filed an application on 23.05.2014 for dispensing with to file written statement on the ground that they are neither party in the suit nor any relief has been claimed against them. The petitioners objected and therefore, the Court below rejected the said application but

subsequently again, they filed application for recall of the order dated 30.08.2014 and filed written statement and now the Court erroneously accepted the written statement by awarding cost of Rs.500 by terms of order dated 04.02.2015.

Perused the order dated 30.08.2014. It appears that the application was filed by defendant Nos.3 to 5 alleging that they are not party to the suit nor any relief has been claimed against them. The court below, therefore, on the prayer of the defendants rejected the said application. Subsequently, it appears that the defendants found that in fact relief has been claimed against them and therefore, filed application for recall of the order and also filed written statement.

The Court below by the impugned order considered the facts of the case and thereafter, accepted the written statement awarding cost of Rs.500.

The Hon'ble Supreme Court in the case of **Sandeep Thapar v. SME Technologies Private Limited, 2014(2) PLJR 284(SC)** has held that "power of court to extend time for filing written statement beyond time schedule prescribed by Rule 1 is not taken away completely." It appears that in that case also, the defendants were debarred from filing the written statement. The High Court refused to allow them to file written statement. The

Supreme Court awarding cost directed that the written statement be accepted.

In view of this decision of the Supreme Court, no doubt, time cannot be extended by routine manner but in the facts and circumstances depending on each case, the Court has the jurisdiction to extend the time. In the present case, the Court below has exercised this jurisdiction and accepted the written statement filed by the defendant Nos.3 to 5. In such circumstances, this Court should refrain from exercising supervisory jurisdiction under Article 227 of the Constitution.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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