

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.977 of 2015

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Khalil Shah & Ors

.... Petitioner/s

Versus

Raso Shah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dronacharya

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 21-04-2016

Heard the learned counsel, Mr. Dronacharya for the petitioners and the learned counsel, Mr. Abdul Mannan for the respondent.

By the order dated 01.12.2014, the learned Munsif, Khagaria refused to accept the written statement filed by the petitioners in Title Suit No.21 of 2010 and has expunged the evidences produced by the defendants-petitioners.

It appears that Title Suit No.21 of 2010 was filed by the plaintiff-respondent. The defendant-petitioner appeared in the said suit on 25.02.2011. Ultimately, when he did not file written statement, he was debarred from filing the written statement on 26.05.2011. However, subsequently he filed the written statement on 12.12.2011 and also filed an application praying for accepting the written statement after setting aside the debarred order. The Court below did not pass any order in the said application and then



the case proceeded. Thereafter the plaintiff's evidences were closed and the defendant-petitioner was also allowed to adduce evidences. In support of the written statement, the defendant-petitioner also adduced his evidences. At the initial stage of argument, it was detected by the petitioner that the written statement filed by the petitioner has not been accepted as the application to that effect which has been filed by the petitioner is still pending. Therefore, another application was filed praying for the acceptance of the written statement. By the impugned order, the Court below has rejected the said application and also expunged all the evidences produced by the petitioner.

The Hon'ble Supreme Court in the case of **Sandeep Thapar v. SME Technology Private Limited, 2014(1) PLJR 284** relied on the decisions of the Supreme Court (2005) 4 Supreme Court Cases 480 held that power of Court to extend time for filing written statement beyond time scheduled prescribed by Rule 1 of Order 8 is not taken away completely, therefore, extension of time is permissible not in a routine manner but only if it was needed, to be given in exceptional cases. In the said case, the Hon'ble Supreme Court also held that cost may be imposed and affidavit and document in support of the grounds pleaded by the defendant for extension of time may be demanded depending

on the facts and circumstances of a given case.

In the present case, it is admitted fact that the written statement was filed with an application for accepting the same. The Court did not accept the same nor the application was disposed of and thereafter the parties were allowed to adduce evidences and in fact, the defendant has also adduced his evidences. In such circumstances, on technical ground, at the stage of argument of the suit, if the written statement is not accepted, it will not only occasion failure of justice but also it will greatly prejudice the defendant's defence case. In fact, the application was not disposed of at the very earliest i.e. in the year 2011 itself when the written statement was filed.

The learned counsel for the petitioner submitted that he has already adduced evidences and, therefore, no further evidence is necessary and only formal order is to be passed accepting the written statement and thereby it will not cause any prejudice to the plaintiff.

In view of the above facts and circumstances of the case, I find that if the order is allowed to stand it will not only occasion failure of justice but shall also greatly prejudice the petitioner and further, if it is set aside, it will neither cause any injustice to the plaintiff nor the plaintiff will be harassed because

evidences have already been adduced.

In the result, this writ application is allowed subject to payment of cost of Rs.1,000 to be paid by the petitioner to the respondent in the Court below within 15 days from receipt of a copy of this order in the Court below. The impugned order is set aside and the written statement filed by the petitioner is accepted.

(Mungeshwar Sahoo, J)

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