

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7875 of 2014

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Banshidhar Pandey

.... Petitioner/s

Versus

Kripa Shankar Pandey & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Randhir Kumar No-1

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 23-02-2016

Heard the learned counsel for the petitioner and the learned counsel, Mr. Waliur Rahman for the plaintiffs-respondents.

By the impugned order dated 17.01.2014 passed by Sub Judge IV, Bhabhua, Kaimur in Title Suit No.71 of 2007, the Court below has rejected the application filed by the petitioner to recall the order whereby the petitioner's alleged second written statement was not accepted and the first written statement has been accepted.

It appears that the petitioner filed earlier written statement on 01.07.2009. Subsequently, another written statement was filed on 21.11.2011 alleging that the earlier written statement which was filed in the year 2009 is not the written statement of the petitioner as the defendant Nos.2 and 3 got it filed without reading it and explaining the contents to the petitioner and it was not even

verified by the petitioner. The Court below earlier accepted the second written statement but subsequently, the defendant Nos.2 and 3 filed application for recall of the same and the Court below recalled the same and refused to accept the second written statement.

The learned counsel for the petitioner submitted that in fact, in view of the statement made by the petitioner in the application for recall of the order, the earlier written statement was not the written statement of the petitioner. Therefore, the Court below had earlier rightly accepted the second written statement.

If this submission of the learned counsel is accepted then according to him, when he appeared in 2007 why he filed the written statement second time in the year 2011. There is no explanation for that, as according to law, as provided under Order VIII Rule 1 C.P.C., he was required to file the written statement within 30 days and the Court may extend the time to next 60 days.

Further, the allegation is that the defendant Nos.2 and 3 keeping the petitioner in dark, got the written statement filed. So far this objection is concerned, it is pure question of fact and that can only be decided on the basis of evidence and unless this finding is recorded, the Court cannot accept the second written statement.

Therefore, I find no reason to interfere with the
impugned order passed by the Court below.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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