

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16951 of 2015

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Hansraj Yadav & Ors

.... Petitioner/s

Versus

Smt. Bibha Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajib Ranjan Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 03-02-2016

Heard the learned counsel, Mr. Rajib Ranjan Jha for the
petitioners.

This application under Article 227 of the Constitution of India has been filed by the defendants-petitioners for setting aside the order dated 13.08.2015 passed by Sub Judge I, Madhepura in Title (Partition) Suit No.126 of 2008 whereby the Court below refused to accept the written statement filed by the petitioners.

From perusal of the record, it appears that partition suit was filed by the plaintiff-respondent against the defendant-petitioner. The present petitioners appeared in the court on 29.01.2010 but did not file the written statement within the prescribed period of 90 days. However, the written statement was filed on 12.03.2012 i.e. after about two years. Thereafter, the present application was filed by them which has been rejected by

the Court below by the impugned order.

From perusal of the impugned order, it appears that the conduct of the petitioners has been noted by the Court below and also noticed that earlier same applications were filed twice which were rejected on 07.06.2012 and 06.12.2013 and third time this application was filed. The Court below also found that these petitioners were delaying the disposal of the suit and even because of their non-cooperation, the suit of the year 2008 is still pending.

The Hon'ble Supreme Court in the case of **Mohammed Yusuf v. Faij Mohammad and others, (2009) 3 Supreme Court Cases 513** considering the earlier decision of the Hon'ble Supreme Court in the case of **Kailash v. Nanhku, (2005) 4 Supreme Court Cases 480** has held that no doubt the provision as contained in Order 8 Rule 1 C.P.C. is 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 an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that context stated 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 for departing from the time-limit fixed by the Code and the power

inhering in the court in terms of Section 148 of the Code. The said case of Kailash is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.”

It appears that in that case also, the trial court rejected the application for acceptance of written statement. The defendant thereafter filed civil revision. The revisional court also dismissed the civil revision affirming the order of the trial court. Thereafter application under Article 227 was filed before the High Court. The High Court allowed the application and set aside the trial court order as well as the revisional court order. The Supreme Court set aside the order of the High Court holding that the jurisdiction of the High Court under Article 227 of the Constitution is limited. The High Court can set aside the order passed by the learned trial court and revisional court only on limited grounds namely, illegality, irrationality and procedural impropriety, at paragraph 13.

In the present case, from perusal of the order passed by the Court below, it appears that a reasoned order has been passed after proper application of judicial mind and, therefore, it cannot be said that the order passed by the Court below is illegal, irrational or there is any procedural impropriety.

Therefore, the impugned order cannot be interfered with in exercise of supervisory jurisdiction under Article 227 of the Constitution.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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