

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5800 of 2016

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Mahesh Yadav @ Nata Yadav & Anr

.... Petitioner/s

Versus

Ramnath Manjhi @ Ramnath Paswan & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 14-12-2016 Heard the learned counsel for the petitioners and the
learned counsel for the respondents.

Perused the impugned order dated 05.03.2016 passed
by learned Sub Judge IX, Siwan in Title Partition Suit No.126 of
2013 whereby the learned Court below refused to recall the order
dated 16.05.2014 by which order the petitioners were debarred
from filing the written statement.

From perusal of the impugned order, it appears that the
petitioners appeared on 15.01.2014 but when they did not file the
written statement within the period prescribed under Order VIII
Rule 1 C.P.C., the petitioners were debarred from filing the
written statement on 16.05.2014. A recall application has been
filed on 04.02.2016 i.e. near about after two years and, therefore,
considering the conduct of the petitioner, the learned Court below
held that this time gap clearly speaks how unaware the petitioner



is and refused to recall the order.

The Hon'ble Supreme Court in the case of **Mohammed Yusuf v. Faij Mohammad and others, (2009) 3 Supreme Court Cases 513** has held that in the case of Kailash v. Nanhku(2005) 4 Supreme Court Cases 480, the provision was held to be directory and not mandatory but 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 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, the trial court refused to accept the written statement considering the delay. The revisional court also refused to accept the same. However, the High Court in writ application under Article 227 of the Constitution of India allowed the same and accepted the written statement by setting aside the orders passed by both the Courts below. The Supreme Court held that High Court can set aside orders passed by Court below only on limited ground of illegality, irrationality and procedural impropriety. The Supreme court therefore, set aside the order of the High Court and even allowed cost of Rs.10,000 to be



paid by the defendant to the plaintiff who was appellant before the Supreme Court.

In the present case, the Court below has refused to recall the order considering the fact that the recall application was filed after two years without there being any satisfactory ground. Therefore, I find that the order cannot be said to be illegal, irrational or it suffers from jurisdictional error nor it can be said that the order passed by the Court below is not according to the procedure prescribed by law.

Thus, I find no reason to interfere with the impugned order. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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