

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.40 of 2016**

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Kailash Rajak & Ors

.... Appellant/s

Versus

Renu Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Nurul Hoda

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 16-08-2016

Heard learned counsel, Mr. S.C. Mishra, appearing for the petitioners and learned counsel, Mr. Sanket, appearing for respondent No.1-plaintiff.

2. From perusal of the impugned order dated 03.02.2016, it appears that the learned Sub-Judge, Gogari in T.S. No. 25 of 2007 refused to recall the order dated 21.08.2008, whereby, the petitioners were debarred from filing the written statement.

3. It appears that T.S. No. 25 of 2007 was filed for declaration of titled and possession. After notice, defendant No.1 appeared on 12.07.2007 whereas the other defendants-petitioners appeared on 07.05.2008 by filing new vakalatanama although they had appeared earlier. They prayed for time for filing written statement and accordingly, time was granted. When they did not file the written statement within time granted by the Court, they

were debarred from filing written statement by order dated 21.08.2008. Thereafter for the first time, they filed the present application for recall of the said order on 24.04.2014 although they were participating in the proceeding of the suit in the court below. By the impugned order, the court below considering all these aspects of the matter held that the petitioners are trying to delay the disposal of the suit.

4. The Hon'ble Supreme Court in the case of ***Md. Yusuf Vs. Faiz Mohammad*** reported in **2009 (3) SCC 513** considering the case of ***Kailsah*** reported in **2005 (4) SCC 480** held that proviso to Order 8 Rule 1 C.P.C. has been held to be directory in the ***Kailash*** case but the Supreme Court therein held that in no uncertain terms stated that the defendants may be permitted to file written statement after expiry of the period of 90 days only in exceptional situation. The Supreme Court further held that the High Court can set aside the orders passed by the courts below under Article 227 of the Constitution of India only on limited ground of illegality, irrationality and procedural impropriety. It appears that in that case, the trial court debarred the defendants from filing the written statement after delay of three years. Civil revision was filed and also the revisional Court confirmed the trial court order. The High Court in exercise of jurisdiction under



Articles 227 and 226 of the Constitution of India set aside the order of the courts below and allowed the defendants-petitioners to file the written statement condoning the delay of three years. The Supreme Court, above, has held that when the courts below had assigned sufficient and cogent reason in support of their orders, the High Court in writ without arriving at found that there was substantial failure of justice or the orders passed by the courts below contained errors apparent on the face of the record warranting interference by superior Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India could not set aside the same. In the present case, it is admitted fact that after six long years, the application was filed for recall of the order debarring the petitioners from filing the written statement. This conduct of the petitioners is nothing but to abuse the process of the Court and they are in fact purchasing time with a view to delay the disposal of the suit and with a view to harass the plaintiff-respondent, who is a lady.

In view of the facts and circumstances of the case, I do not find any irregularity or impropriety in the impugned order or jurisdictional error or it cannot be said that the order passed by the court below is not in the manner permitted by law or it has occasioned failure of justice. As such, in my opinion, it is not a

case for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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