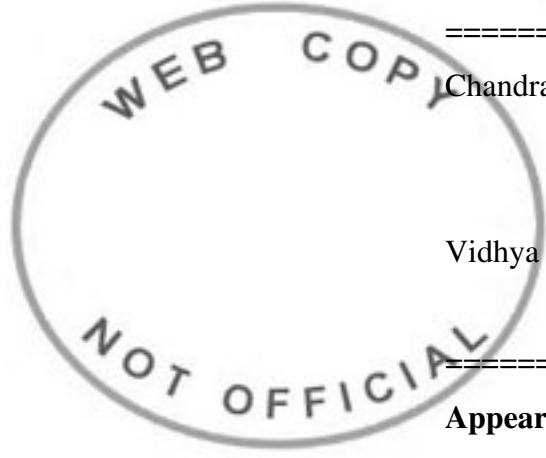


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6443 of 2015



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Chandrawati Devi & Ors

.... Petitioner/s

Versus

Vidhya Sagar Pathak & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Damodar Prasad Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

5 19-01-2016

Heard learned counsel Mr. Damodar Prasad Tiwari,
on behalf of the petitioners and learned counsel Mr. Mahendra
Thakur, appearing on behalf of respondent no.1.

At the time of hearing of the Interlocutory Application No.
276 of 2016, the learned counsels appearing on behalf of both the
parties submitted that the writ application itself may be heard on
merit in admission matter. Accordingly, I heard them on merit in
admission matter.

It appears that the plaintiffs-respondents filed Title Suit No.
568 of 2006 for declaration of the sale deed mentioned therein and



the deed of gift executed by defendants are forged, fabricated, fraudulent and void. The defendants appeared but did not file written statement within the period prescribed under the provisions contained in Order 8 Rule 1 C.P.C. The petitioners were, therefore, debarred from filing the written statement by terms of order dated 30.11.2007. Thereafter evidences were adduced by the plaintiffs and the witnesses were cross-examined by the defendants-petitioners. The petitioners then filed an application for recall of the order dated 30.11.2007 and the Court below by the impugned order dated 30.03.2015 rejected the said application.

The learned counsel for the petitioners relied upon a decision of this Court in the case of ***Md. Mumtaz Ahmad Vrs. Md. Mozahid Imam*** 2015 (1) BBCJ 165 and submitted that the provision as contained in Order 8 Rule 1 C.P.C. is not mandatory rather it is directory. Therefore, the petitioners be allowed to file the written statement and be allowed to contest the suit. According to the learned counsel because of fault on the part of the advocate the written statement could not be filed within time prescribed. The learned counsel however submitted that if the order is allowed to stand, it will occasion failure of justice. The learned Court below has wrongly refused to recall the order debarring the

petitioners from filing the written statement.

On the other hand the learned counsel for the respondents submitted that there is no reason as to why the order debaring the petitioners be recalled in the present case only on the mere statement that because of fault of advocate the petitioners were debarred from filing the written statement.

Perused the order passed by the Court below.

From perusal of the same it appears that admittedly the petitioners appeared in the case on 14.08.2007. The defendants did not file written statement, although time was granted by the Court. Therefore, on 30.11.2007 the petitioners were debarred from filing the written statement. For six years no steps were taken by the petitioners. The plaintiffs already concluded the examination of the witnesses and the case has been posted for argument. After expiry of more than six years, the application was filed by the petitioners on 16.12.2013 for recall of the order dated 30.11.2007. It further appears that prior to this application the petitioners had already filed application for recall on 10.09.2013 which was not pressed, as a result of which it was dismissed then this subsequent application was filed.



So far the decision relied upon by the learned counsel for the petitioners is concerned, it may be mentioned here that in that case this Court was deciding the question in First Appeal. No doubt although it has been held by the Hon'ble Supreme Court that the provision as contained in Order 8 Rule 1 C.P.C. is directory but the Hon'ble Supreme Court in the case of *Mohammed Yusuf Vrs. Faiz Mohammad* (2009) 3 SCC 513 has held that though in *Kailash Case* (2005) 4 SCC 480 Order 8 Rule 1 proviso was held to be directory, the Supreme Court therein in no uncertain term stated that the defendants may be permitted to file written statement after the expiry of period of 90 days only in exceptional situations. It appears that in that case there was delay of three years in filing the written statement. The trial Court rejected the application and revisional Court also confirmed the same. However in exercise of supervisory jurisdiction under Article 227 the High Court permitted the defendants to file written statement condoning the delay of three years. The Hon'ble Supreme Court set aside the order of the High Court and held that trial Court as well as original Court had assigned sufficient and cogent reasons in support of their orders rejecting the condonation of delay. The High Court can set aside orders passed by courts below only on limited ground of illegality, irrationality and

procedural improprietary. In the present case the delay is of about more than six years. So far the decision relied upon by the petitioners i.e Md. Mumtaz Ahmad Kaisher is concerned in that case there was delay of about 6 or 7 months. As stated above the Court below has considered all these aspect of the matter and conduct of the petitioners and therefore, only on the ground that the provision is directory, the impugned order cannot be interfered with in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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