

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4936 of 2014

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Kuldeep Hathi

.... Petitioner/s

Versus

Umesh Kumar Jha & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 22-01-2016 Heard the learned counsel, Mr. Bimal Kumar for the
petitioner.

The plaintiff-petitioner has filed this application under Article 227 of the Constitution against the order dated 10.05.2013 passed by Sub Judge I, Sitamarhi in Title Suit No.128 of 2006 whereby the Court below recalled the order dated 03.11.2010 and permitted the defendant No.4 to contest the suit.

From perusal of the order dated 03.11.2010 and 10.05.2013, it appears that the Court below after gazette notification accepted the notice to have been validly served on defendant Nos.4 to 20 on 03.11.2010. Thereafter, the defendant No.4 appeared on 21.04.2011 and filed written statement with affidavit and prayed for recall of the order dated 03.11.2010 and for accepting the written statement. After hearing both the parties, the Court below by the impugned order accepted the written

statement filed by the defendant No.4 after recalling the order dated 03.11.2010. It is settled principles of law that the provision as contained in Order VIII Rule 1 C.P.C. is not mandatory rather it is directory. The Court cannot permit the defendant to file written statement after 90 days in routine manner. The Court has to assign reason for doing so. In this matter reference may be made to the case of **Mohammed Yusuf v. Faij Mohammad & Ors.(2009)3 Supreme Court Cases 513.**

In the present case, it may be mentioned here that the notice was accepted as valid service on gazette notification on 03.11.2010. The defendant No.4 appeared on 21.04.2011 and on that very date, he filed the written statement with affidavit praying for recall of the earlier order.

Considering this aspect of the matter, the Court below has accepted the written statement on payment of cost of Rs.700, therefore, in my opinion, the Court below has rightly exercised the discretionary jurisdiction. As such, the impugned order needs no interference in supervisory jurisdiction.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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