

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1059 of 2016**

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Ramjan & Ors

Versus

Most. Hashina & Ors

.... Appellant/s

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gyan Prakash Ojha

For the Respondent/s : Mr.

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

2 10-11-2016 **1.** Heard the learned counsel, Mr. Pramod Kumar Singh,
for the petitioner.

2. Perused the impugned order dated 21.08.2013 and
15.07.2016 passed by Sub Judge Baisee, Purnea in Title Suit
No.164 of 2011 whereby the learned Court below has in the first
order debarred the petitioners from filing the written statement and
in the second order refused to allow the petitioner to file written
statement.

3. From perusal of the order, it appears that the Court
below considered the conduct of the petitioner and also the period
for which they did not file the written statement. The Court below
also considered that the petitioners allowed the plaintiff to
examine 6 witnesses and thereafter held that sufficient time was
granted but they did not choose to file the written statement.



4. The Hon'ble Supreme Court in the case of *Md. Yusuf Vs. Faiz Mohammad (2009) 3 SCC 513* has held that in the case of *Kailash vs Nanhku (2005) 4 SCC 480*, the Proviso to Order 8 Rule 1 CPC has been held to be directory but the Supreme Court in no uncertain directions stated that the defendants may be permitted to file written statement after the expiry of period of 90 days only in exceptional situation.

5. It appears that in that case there was three years delay in filing the written statement. The trial Court rejected the filing of the written statement and the High Court in exercise of jurisdiction under Article 227 of the Constitution of India set aside the order of the trial Court and allowed the defendant to file the written statement. The Hon'ble Supreme Court held that High Court can set aside orders passed by Courts below only on limited ground of illegality irrationality and procedural impropriety.

6. In the present case at our hand, the petitioner appeared in the suit on 03.10.2012. In spite of time granted by the Court, no written statements were filed till 21.08.2013, therefore, the Court below debarred the petitioner from filing the written statement. Thereafter, the petitioner remained silent. They allowed the plaintiff to examine the witnesses and they did not even cross-



examine the witnesses for about three years. On 17.05.2016, for the first time, they filed the application that they may be permitted to file the written statement after recalling the order debarring them to file written statement. The Court below considered the conduct of the petitioner and the delay of about four years and the fact that six witnesses have been examined on behalf of the plaintiff rejected the application. In such view of the matter, in no case it can be said that the orders passed by the Court below is without jurisdiction or it has been passed in the manner not permitted by law.

7. The Hon'ble Supreme Court in the case of **Md. Yusuf (Supra)** has held that a dispensation that makes order 8 Rule 1 directory leaving it to the Courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendment of the Code. It is, therefore, necessary to emphasis that the grant of extension of time beyond 30 days is not automatic and that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on clear situation of the justification for granting such extension.

8. In view of the above facts, I do not find any reason to interfere with the impugned order and thus this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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