

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.905 of 2016**

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Shankar Sah

.... Petitioner/s

Versus

Girja Devi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjeet Kumar

For the Respondent/s : Mr.

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

3 21-02-2017 Heard the learned counsel for the petitioner and the
learned counsel for the respondent.

Perused the impugned order dated 11.05.2016 passed
by learned Sub Judge I, Siwan in Money Suit No.19 of 2014
whereby the learned court below refused to accept the written
statement after recalling the order dated 14.09.2015 whereby the
petitioner was debarred from filing the written statement.

It appears that the petitioner appeared on 18.05.2015
and then the court below debarred him from filing written
statement on 14.09.2015. The petitioner then filed the written
statement on 19.09.2015.

From the above facts and circumstances, it appears that
only on the ground of delay of about 30 days the petitioner has
been denied to contest the suit filed by the plaintiff-respondent.

The Hon'ble Supreme Court in the case of **Sandeep**



Thapar v. S.M.E. Technologies Private Limited, 2014(2) PLJR 284(SC) referring to the earlier decisions of the Supreme Court in the case of **Kailash vs. Nanhku and Ors., (2005)4 Supreme Court Cases 480** has held that the provision as contained in Order VIII Rule 1 C.P.C. is not mandatory. The court has the power to extend time for filing written statement and the time schedule and this power of the court is not taken away but the extension of time is permissible not in a routine manner but if it was needed to be given in exceptional cases so as to prevent grave injustice and for that cost may be awarded.

In the present case at our hand, the petitioner admittedly appeared four months after the gazette publication. Three times the court below granted adjournments directing the petitioner to file written statement on payment of cost but he did not file the written statement. Therefore, he was debarred and thereafter he paid the cost for adjournment and then also he filed written statement one month after the order debarring him.

In view of the above facts and circumstances of the case, prima facie, it appears that the petitioner intentionally delayed the matter for about more than nine months in disposal of the case.

In the result, this civil miscellaneous application is



allowed and the impugned order is set aside subject to payment of cost of Rs.5,000/- to be paid by the petitioner to the respondent in the court below within one month. If the cost is not deposited in the court below within the aforesaid period, the court below shall not entertain the written statement filed by the petitioner and proceed to decide the case as if no defence has been delivered. If the cost is deposited, the plaintiff-respondent is at liberty to withdraw the same.

(Mungeshwar Sahoo, J)

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