

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6023 of 2016

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Md. Ismail & Anr

.... Petitioner/s

Versus

Md. Farooque & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nafisuzzoha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 19-01-2017 Heard the learned senior counsel, Mr. Raghiv Ahsan for the defendants-petitioners and the learned counsel, Mr. Najib Ahmad for the plaintiff-respondent No.1.

Perused the impugned order dated 29.01.2016 passed by Sub Judge, Baisi, Purnea in Title Suit No.14 of 2015 whereby the learned court below refused to accept the written statement filed by the petitioners on the ground of delay.

It appears that defendant-petitioners appeared in the suit on 11.05.2015. Subsequently, on creation of court at Baisi, the record was transferred to the court of Sub Judge at Baisi on 19.06.2015. The written statement was filed on 19.09.2015.

The learned senior counsel for the petitioner submitted that for two months, at Baisi, after transfer, the record was not available and/or could not be traced, therefore, the written statement could not be filed. However, there is no much delay in



filing the written statement and the provision as contained in Order VIII Rule 1 is not mandatory. The petitioners have already filed written statement on 19.09.2015, therefore, there is delay of only about 38 days. In such circumstances, the court below should have accepted the written statement and permitted the petitioners to contest.

On the other hand, the learned counsel for the plaintiffs-respondents vehemently opposed the prayer and submitted that more than 5-6 adjournments were granted to the petitioners for filing written statement but they intentionally did not file the same and when they were debarred on 28.08.2015, they filed the written statement, therefore, the intention is to harass the plaintiffs-respondents.

In view of the above facts and circumstances of the case that there is about 39 days delay in filing the written statement and the same has been filed after adjournments and direction given by the trial court after 90 days i.e. 30 days after the defendants-petitioners were debarred from filing the written statement, the petitioners are liable to pay the cost to the plaintiffs-respondents in view of the decision of the Supreme Court in 2014(2) PLJR 284(SC).

Thus, this writ application is allowed. The impugned



order is set aside subject to payment of cost of Rs.2,000/- to be paid by the petitioners to the plaintiffs-respondents in the court below within one month.

(Mungeshwar Sahoo, J)

Saurabh/-

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