IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8218 of 2013

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Triveni Paswan S/O Late Bauelal Paswan R/O Village- Damodarpur Mahuli, Police Station- Sarairanjan, Post Office- Akhtiarpur, District- Samastipur

.... Petitioner

Versus

1. Sunaina Devi W/O Bilat Sharma R/O Village- Damodarpur Mahuli, Post Office- Akhtiarpur, Police Station- Sarairanjan, District- Samastipur
2. Bharosi Paswan S/O Jitan Paswan R/O Village- Damodarpur, Post Office- Akhtiarpur, Police Station- Sarairanjan, District- Samastipur
3. Ram Chandra Paswan S/O Jitan Paswan R/O Village- Damodarpur, Post Office- Akhtiarpur, Police Station- Sarairanjan, District- Samastipur

.... Respondents

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Appearance :

For the Petitioner : Mr. Sachidanand Choudhary, Advocate
Mr. Lovekush Kumar, Advocate

For the Respondents : Mr. Sanjeev Kumar Mishra, Advocate
Mr. Piyush Saurav, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 16-11-2017

The petitioner before this Court is defendant of Title Suit No.205 of 2007. He has filed the present application for setting aside the order dated 05.10.2012 whereby and whereunder the written statement filed on his behalf was rejected.

2. Heard both sides.

3. The respondents filed Title Suit No.205 of 2007 against the petitioner for passing a decree for removing encroachment against the petitioner and also an interim injunction restraining the petitioner from making any construction over the land measuring 18 dhurs of Khesaa No.72,73 and 74 (part) corresponding to C.S.plot no. 28(part)

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of Khata no.56 described in schedule of the plaint.

4. It appears that after service of summons, the petitioner appeared before the court below on 13.08.2008 and filed a time petition for filing written statement. The court below allowed the petition and adjourned the case to 18.12.2008 for filing written statement and on that day the petitioner filed a written statement. It appears that this petitioner filed a petition on 17.08.2010 praying therein to accept the written statement and recall the order dated 07.12.2009 whereunder the case was fixed for ex-parte hearing. The respondents-plaintiffs filed a rejoinder on 26.10.2010. The prayer of petitioner was rejected. The provision of order 8 Rule 1 CPC provides 30 days time for filing written statement from the date of service of summons with a proviso that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file the same on such other day as may be specified by the court, for the reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons. The Hon'ble Apex Court in AIR 2005 SC 2441 has observed that the provision of Order VIII rule 1 is directory and not mandatory being procedural law. The court has power to accept the written statement beyond the prescribed period of 90 days. In the case in hand, the petitioner as per direction of the court filed the written statement on the date fixed by

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the court itself. The court below has thus erred in refusing to accept the written statement and fixing the date for ex-parte hearing

5. In view of above facts, the order dated 05.10.2012 rejecting the petition dated 17.08.2010 filed by the defendant is set aside and this application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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