

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14081 of 2012

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Md. Gosh

.... Petitioner/s

Versus

Bibi Samima Khatoon & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 07-08-2017 Heard learned counsel Mr. (Dr.) Manoj Kumar for
the petitioner.

In spite of service of notice, nobody appeared on
behalf of respondent no.1.

This application under Article 227 of the Constitution
of India has been filed by the defendant no.5-petitioner praying for
setting aside the order dated 09.12.2011 passed by learned
Subordinate Judge-VII, Bhagalpur in Title Suit No.71 of 2007/544
of 2009 whereby the learned court below has rejected the
application filed by the petitioner to recall the order whereby he
was debarred from filing the written statement.

The learned counsel for the petitioner submitted that
because of want of appropriate advice the petitioner could not file
written statement within the period prescribed. Moreover, the suit
was at the stage of appearance of the defendants. However, the



written statement was filed on 18.02.2008 whereas the petitioner was debarred from filing the written statement by order dated 15.01.2008.

Perused the impugned order.

Admittedly the petitioner has appeared in the case on 01.05.2007. The court below debarred him from filing written statement by order dated 15.01.2008 holding that there is delay of about seven and half months. Immediately within one month the written statement was filed by defendant no.5-petitioner. The court below rejected the application for recall on the ground that after much delay the written statement has been filed.

The Hon'ble Supreme Court in the case of **Sandeep Thapar Vs. SME Technologies Private Limited, 2014 (2) P.L.J.R. 284 (SC)** has held that the power of Court to extend time for filing written statement beyond time schedule prescribed by Rule 1 is not taken away completely. Extension of time is permissible not in a routine manner but only if it was needed to be given in exceptional cases so as to prevent grave injustice and the Hon'ble Supreme Court further held that in appropriate cases to compensate the other side cost may be awarded and in that the Hon'ble Supreme Court awarded Rs.50,000/- cost for filing written statement. However, in the present case the written



statement has already been filed by the present petitioner. The court below has, therefore, wrongly not exercised a jurisdiction vested in it by law and did not consider that if the defendant no.5-petitioner is not allowed to contest the suit, it will prejudice the petitioner and also it will be injustice to the petitioner.

Thus, this writ application is allowed. The impugned order is set aside and the application filed by the petitioner to recall the order debarring the petitioner to file written statement is hereby recalled subject to payment of cost of Rs.2,000/-(Rupees two thousand) to be paid by the present petitioner in the court to the plaintiff-respondent no.1 within one month.

(Mungeshwar Sahoo, J)

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