

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15436 of 2013

IN

C.R. 749 of 2007

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Shairun Nissa wife of late Md. Ali.

2.Shamshad Ali son of late Md. Ali,

3.Shaukat Ali son of late Md. Ali,

4.Shamsher Ali son of late Md. Ali,

5.Sher Ali son of late Md. Ali,

All residents of At & P.O. & P.S. Mirganj, District-Gopalganj.

....Plaintiffs/Petitioner/s

Versus

1.Ramjee Prasad son of Late Vishwanath Ram,

2.Lakhsmanjee Prasad son of Late Vishwanath Ram,

3.Dhurbjee Prasad son of Late Vishwanath Ram,

All residents of At & P.O. & P.S. Mirganj, District Gopalganj.

4.Urmila Devi wife of Sri Raghunath Prasad, Daughter of late Vishwanath Ram,
resident of Babu Gyan Chawk, At & P.O. & P.S. Motihari, District East
Champaran.

Defendants 1st Set/Opposite Parties 1st Set.

5.Amma Khatoon wife of Late Md. Bashir.

6.SAgir Ahmad son of Late Md. Bashir.

7.Ajmeri @Raju son of Late Md. Bashir.

8.Shahjahan Khatoon Daughter of late Md. Bashir wife of Shir Phool Mohammad,
resident of village Sheikh Mohalla, P.O. & P.S. Siswan, District Siwan.

9.Noorjahan Khatoon daughter of late Md. Bashir, wife of Shri Gausa Alam,
resident of At & P.O. Bathua Bazar, P.S. Mirganj, District Gopalganj.

-Defendants 2nd set/Opposite Parties 2nd Set.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MAHESH NARAYAN PARBAT, Sr.
ADV & Mr. SANJAY KUMAR JHA, ADV

For the Respondent/s : Mr. RAGHAV PRASAD, ADV

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-01-2017

Heard Mr. Mahesh Narayan Parbat, learned senior
counsel for the petitioners.

Learned counsel for the respondents is also present.

The legal sustainability of the impugned order by which



the learned court below has allowed the prayer on behalf of the defendants to incorporate the amendment in the written statement has been questioned in the present application under Article 227 of the Constitution of India.

The matrix of facts discloses that the amendment petition was filed on 01.09.1998 by the defendants for amendment in the written statement which was allowed by the learned court below on 10.09.1998. The civil revision application filed against the said order allowing the amendment was also dismissed by this Court. The hearing of the suit proceeded and the defendants led their evidence also in accordance with the amendment as allowed in the written statement. However, the petition was filed on behalf of the defendants on 19.10.2006 praying for permission of the Court for incorporating the amendment in the written statement as allowed by the order dated 10.09.1998. The learned court below by the impugned order has allowed the prayer of the defendants after imposing cost.

Mr. Parbat, learned senior counsel appearing for the petitioners has submitted firstly that the court below has acted without jurisdiction in passing the order allowing the prayer of the defendants delay of nearly eight years. It has been contended that in accordance with the provisions as contained under Order 6 Rule 8



C.P.C even the petition for extension of time must for incorporating the amendment in the pleading be filed within a period of 14 days from the date of the order allowing the prayer for amendment. The next limb of argument of the learned senior counsel is that the court is required to record its dissatisfaction to the sufficiency of the cause before allowing the prayer for such extension but in the present case the court below has remained oblivious of the sufficiency of the cause. The learned counsel has also placed reliance upon the decision in the case of *Mostt. Kanti Devi & Anr vs Surendra Prasad Singh & Ors 2004(3) BLJR 1775* in support of his contention that the provision as contained under Order 6 Rule 18 is mandatory and must be followed in that sense.

After considering the submissions and perusal of the impugned order, it is manifest that though the prayer for amendment in the written statement was allowed on 10.09.1998 the said amendment was not incorporated in the written statement by the defendants as prescribed under Order 6 Rule 18. However, it also transpires from the impugned order that the defendants led their evidence in accordance with the amendment in the written statement and have filed the petition taking the plea of illness in the family and remaining outside on that count. The learned court below after considering the facts and circumstances of the case has exercised its



discretion in favour of the defendants after imposing cost upon the defendants. This Court is not persuaded to align with the submission made on behalf of the petitioners that any petition for extension of time must have been filed within 14 days of the date when the prayer for amendment has been allowed. The decision relied upon by the learned senior counsel on behalf of the petitioners also does not curtail the discretion of the court in allowing the prayer for extension of time for incorporating the amendment. In this factual background, this Court is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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