

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22766 of 2013

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Sheikh Abdul Kalam & Anr

.... Petitioner/s

Versus

Salim Khan & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 10-10-2017 Heard the learned counsel, Mr. Ashutosh Jha, for the petitioner.

This writ application has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the order dated 17.07.2013 passed by learned Sub Judge VIII, Bhagalpur in Title Suit No.233 of 1993 whereby the learned Sub Judge refused to recall the order dated 30.08.2005 debarring the petitioner from filing the written statement.

It appears that this petitioner appeared in the suit in the year 2005 and then did not file the written statement till the year 2013. For the first time, in the year 2013, he filed an application for recall of the order debarring him from filing the written statement.

The learned counsel for the petitioner submitted that earlier the written statement was directed to be filed and Advocate was entrusted to file the written statement but the same was not filed



by the Advocate. When the petitioner learnt that the written statement has not been filed from another Advocate and thereafter filed the application for recall of the order debarring him from filing the written statement but the learned Court below has rejected the said application. According to the learned counsel, if the impugned order is not set aside, the petitioner shall suffer serious loss. Moreover one should not suffer for the fault of the Advocate. It is fault of the Advocate who did not file the written statement although he was entrusted for the same. The learned counsel relied upon the decision of the Hon'ble Supreme Court reported in *AIR 1981 SC 1400*.

From perusal of the impugned order, it appears that the Court below has considered the omission and commission of the present petitioner. In the year 2005, the petitioner appeared and for long 8 years, he did not even went to look the case and try to know the status of the case. Only in the application for the first time in 2013, all the applications have been given to the Advocates.

The Hon'ble Supreme Court in the case of *Mohammed Yusuf Vs. Faij Mohammad 2009 (3) SCC 513* has held that 'High Court can set aside orders passed by Courts below only on limited ground of illegality, irrationality and procedural impropriety.' In the present case at our hand neither the impugned order can be



said to be illegal or irrational or it suffers from procedural impropriety. In the case before the Supreme Court, there was delay of about 3 years only in filing the written statement. The revisional Court had set aside the order of the trial Court and allowed the defendant to file written statement but the Supreme Court set aside the revisional order and held that the High Court could not have set aside the order of the trial Court in exercise of jurisdiction under Article 227 of the Constitution of India. In the present case, the delay is 8 years and only explanation is it is the fault on the part of the Advocate.

From perusal of the decision of the Hon'ble Supreme Court reported in *AIR 1981 SC 1400*, it appears that the fact of that case is entirely different and is not applicable in the facts and circumstances of the present case. Thus, in my opinion, no case for interference in exercise of supervisory jurisdiction is made out. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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