

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1088 of 2016**

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Md. Salim @ Salim

.... Appellant/s

Versus

Khurshid Anwar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nitesh Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 17-01-2017 **1.** Heard the learned counsel, Mr. A.B. Ojha, for the petitioner and the learned counsel, Mr. Ajay Kumar for the contesting respondent No.1 and the learned counsel, Mr. Satish Kumar Singh, for respondent No.2 to 25.

2. It appears that the defendant-petitioner and other contesting defendant in the suit appeared on 20.06.2014. They were debarred from filing written statement by order dated 29.07.2015 and immediately the petitioner filed written statement on 03.09.2015 and thereafter, he and other defendant respondent filed application for recall of the order dated 29.07.2015. This application filed by the petitioner and other on 17.12.2015 has been rejected by the impugned order on the ground that there is much delay in filing the written statement.

3. The learned senior counsel, Mr. Ojha, for the petitioner



submitted that after appearance of the petitioner, the case was transferred from Purnea to Baisi and, therefore, because of this transfer, the written statement could not be filed, however, as soon as the petitioner and other defendants were debarred from filing written statement, they filed written statement. Moreover, the amendment application filed by the plaintiff is still pending which has not been disposed of because of transfer of case from one place to other place.

4. He further submitted that in such circumstances in view of the decision of Hon'ble Supreme Court reported in **2014 (2) PLJR 284 SC** which has considered the earlier decisions of the Supreme Court and has held that 'the provision being in the domain of the procedural law, it has to be held to be directory and not mandatory. The power of the Court to extend time for filing the written statement beyond time schedule provided by Order 8 Rule 1 of the CPC is not completely taken away. In the said decision, the Hon'ble Supreme Court also held that the Court can accept the written statement after awarding cost.'

5. In the present case, the Court below has rejected the application and also the written statement on the ground that within 90 days, the same was not filed without considering the law



laid down by Supreme Court. In my opinion, therefore, the Court below has refused to exercise the jurisdiction vested in it by law and if the order is allowed to stand, it will occasion failure of justice because the suit may proceed ex.-parte as the respondent No.2 to 25 are the supporting defendants.

6. In view of the above facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court, the Civil Misc. application is allowed. The impugned order dated 8.6.2016 passed by Sub Judge Biasee, Purnea in Title Suit No.354 of 2013 is set aside subject to payment of cost of Rs.5000/- by the petitioner to the plaintiff-respondents in the Court below within one month failing which the Court below is directed to again debar them from filing written statement. If the cost will be paid/ deposited by the petitioner within the aforesaid period, the Court below shall accept the written statement filed by the petitioner and the defendant respondents.

(Mungeshwar Sahoo, J)

Sanjeev/-

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