

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17310 of 2012

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Mahesh Ram & Ors

.... Petitioner/s

Versus

Ramchander Mistry & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hansraj

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 07-08-2017 Heard learned counsel Mr. Hansraj for the petitioners
and learned counsel Mr. R.K.P. Singh for the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the defendants-petitioners for setting aside the order dated 16.07.2012 passed by learned Subordinate Judge-VII, Biharsharif, Nalanda in Title Suit No.267 of 2010 whereby the learned Subordinate Judge has refused to accept the written statement filed by the defendants-petitioners and has also refused to recall the order dated 12.12.2011 debarring the defendants-petitioners from filing written statement.

3. The learned counsel for the petitioners submitted that the trial court granted time till 12.12.2011 to file written statement to the defendants-petitioners. The written statement was being typed and affidavited on 12.12.2011 but because of delay application for time was filed before the trial court seeking further



adjournment but the court below on that date debarred the petitioners from filing the written statement. According to the learned counsel, the written statement was filed on the next day i.e. on 13.12.2011 but the court below refused to recall the said order dated 12.12.2011 debarring the petitioners from filing the written statement.

4. On the other hand, the learned counsel Mr. R.K.P. Singh appearing on behalf of the respondents submitted that no reason has been assigned by the defendants for adjournment of the case for filing written statement. Although it has been held by the Supreme Court that Order 8 Rule 1 CPC is not mandatory rather it is directory but then in a routine manner the court cannot grant time to the defendants to file written statement. In the present case without assigning any reason the defendants filed application for time for filing written statement and after much delay the written statement was filed i.e. only after when the defendants were debarred from filing the written statement. The learned counsel for the respondents further submitted that the court can extend the period beyond 90 days for 30 days only as provided under Section 148 of the Code of Civil Procedure which has not been considered by the High Court as well as by the Supreme Court in any decision.



5. Perused the impugned order.

6. The suit has been filed for declaration of title and confirmation of possession and/or in the alternative, for recovery of possession. These petitioners are the only defendants. The notice was published in the newspaper on 09.05.2011. Now, therefore, even if it is held that summons were served on the defendants on 09.05.2011, 90 days expired on 09.08.2011. However, the court below did not debar the defendants from filing the written statement, thereafter the defendants appeared in the court below on 04.06.2011. The court below granted consecutive times for some dates on payment of cost and last date was 12.12.2011. The written statement was affidavited on 12.12.2011 but in view of the submission of learned counsel for the petitioners it could not be filed on the same date and it was filed on 13.12.2011. In such circumstances, the court below has approached the case in hyper technical manner and has rejected the application to recall the order whereby the petitioners were debarred from filing the written statement and refused to accept the written statement. Admittedly since the petitioners are only contesting the suit and if they are not allowed to contest the suit, it will prejudice the petitioners and shall lead to multiplicity of proceeding and also it will occasion failure of justice. However,



considering the laches and omissions on behalf of the petitioners, the petitioners are liable to compensate the other side by payment of cost.

7. In the result, this writ application is allowed. The impugned order is set aside. The application filed by the defendants-petitioners to recall the order dated 12.12.2011 is hereby allowed. The petitioners' written statement is accepted subject to payment of cost of Rs.2,000/-(Rupees two thousand) to be paid by the petitioners to the plaintiffs-respondents within one month from today in the court below.

(Mungeshwar Sahoo, J)

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