

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.377 of 2016

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1. Chandrika Yadav, S/o Mitran Yadav.
2. Barister Yadav, s/o Mitran Yadav, both are Resident of Village- Balhan,
Tola- Kharbana, P.S.- Barauli, P.O.- Bishunpura Bazar, District- Gopalganj.

.... Appellant/s

Versus

1. Ramchandra Rai, S/o Late Bhabhumi Rai.
2. Mahatama Rai, S/o Late Deonandan Rai.
3. Brigunath Rai, S/o Late Banaras Rai.
4. Pramod Rai, S/o Late Banaras Rai.
5. Ashok Rai, S/o Late Bindeshwar Rai, All are Resident of Village-
Badhegi, P.O.- Badhegi, P.S- Barauli, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhakar Nath Rai
For the Respondent/s : Mr. Bijay Prakash, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

5 24-11-2017 Heard both sides.

The petitioners have filed this Civil Misc. petition against the order dated 01.04.2016 (Annexure-1) passed by learned Civil Judge (Sub-Judge), X, Gopalganj in Title Suit No. 541 of 2013 by which the learned Sub-Judge rejected the petition filed on behalf of defendants No. 1 and 2 for accepting their written statement.

From the order itself, it appears that defendants No.1 and 2 appeared in the suit but they did not file their written statement within 90 days, as prescribed under Order VIII Rule 1 of the Code of Civil Procedure.

The learned counsel for the petitioners submits that defendant No.3 later on appeared and joint written statement was filed on behalf of all the three defendants but the learned Sub-



Judge, without appreciating the law that filing of written statement within 90 days is not mandatory, rejected the written statement of defendants No.1 and 2, the petitioners, but at the same time accepted the written statement filed on behalf of defendant No.3. The rejection of written statement shall cause immense injustice to the petitioners.

On such, the learned counsel for the respondents submits that at the first instance the written statement should have been filed within 30 days from the date of notice and thereafter within 90 days but the reason for such delay should have been explained. The defendants No.1 and 2 appeared in the suit but did not file written statement.

It appears that Rule 1 of Order VIII is not mandatory in nature so far as time is concerned and if joint written statement was filed on behalf of all the three defendants and learned Sub-Judge accepted the written statement of defendant No.3, I do not find any reason that the same was rejected on behalf of defendants No. 1 and 2. Thus, I find that the learned Sub-Judge has committed error in rejecting the written statement of defendants No. 1 and 2. Accordingly, the order dated 01.04.2016 (Annexure-1) is set aside. The learned court is directed to proceed further after accepting written statement of defendants No. 1 and 2.

This Civil Misc. petition stands allowed.

(Prabhat Kumar Jha, J)

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