

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1481 of 2017**

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1. Smt. Shanti Devi @ Shanti Devi Daughter of Anandi Mirdha, Wife of Bhubneshwar Yadav
2. Arbind Kumar Son of Bhubneshwar Yadav
3. Binod Kumar @ Vinod Kumar @ Vinod Yadav Son of Bhubneshwar Yadav All are Resident of Village-Belouri, Police Station Mufassil (Sadar), District Purnea.

.... Petitioner/s

Versus

1. Vikash Kumar @ Vikas Kumar Son of Shri Umesh Chandra Singh Resident of Mohalla Abdulla Nagar, Police Station Sadar, District Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Viveka Nandsingh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

2 08-08-2018 Heard both sides.

The petitioners have filed this civil miscellaneous petition against the order dated 23.12.2016 passed in Title Suit No.286 of 2012 by which the petition of the petitioner for recalling the order dated 30.11.2015 by which the petitioners have been debarred from filing written statement and acceptance of written statement of the petitioners has been rejected.

Learned counsel for the petitioners submits that of course the petitioners appeared in the year 2014 but due to illness of defendant No.1, the petitioner could not remain in contact with his lawyer and, therefore, he did not know about the fact that the



petitioners have been debarred from filing written statement. If the order is allowed to stand, the defendants would suffer irreparable loss and injustice would be caused to them but the learned court below has not considered all these facts and dismissed the petition of the petitioners.

Learned counsel for the respondents supported the impugned order and submitted that for more than two years, the petitioners even after their appearance in the court did not take any step nor filed any petition for extension of time for filing written statement. It is further submitted that no document of illness of defendant No.1 has been filed.

Admittedly, the defendants appeared through their lawyer in the year 2014 but could not file the written statement within 90 days as prescribed in Order VIII Rule 1 of the Code of Civil Procedure. The defendants have stated that they have been prevented from filing written statement on account of illness of defendant No.1. Even after debarring the defendants from filing written statement, the suit is at very initial stage and the hearing of the suit has not yet commenced.

In this view of the fact, I find in the interest of justice that the learned Sub Judge should have allowed the defendants to file written statement and contest the suit after quantifying the cost for



causing such delay.

Accordingly, in my view the order suffers from jurisdictional error and the same is set aside. The petitioners are allowed to file written statement within 30 days from the date of receipt of this order on payment of cost of Rs.5,000/- to the plaintiff.

Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

Saurabh/-

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