

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.222 of 2017**

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Ajay Kumar @ Ajay Kumar Sharma, S/o Ramji Singh, resident of village -  
Madhopur, P.O. Dhibra, P.S. Janipur, District - Patna

.... .... Petitioner/s

Versus

Smt. Ribha Sinha & Ors.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Yashraj Bardhan

For the Respondent/s : Mr.

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

3      11-10-2018      Heard both sides.

The petitioner has filed this civil miscellaneous petition for quashing the order dated 26.10.2016 passed by Sr. Civil Judge III, Patna in Title Suit No.5310 of 2014 by which the petition of the petitioner to admit the written statement of the petitioner and allow him to contest the suit has been rejected.

The brief facts relevant for disposal of this petition can be summarised as follows:

The petitioner is one of the defendants in the suit. The sole defendant of the suit Ramji Singh died on 16.05.2014. The plaintiff substituted his legal heirs including the petitioner but the petitioner did not receive any summons or notice for his appearance. The petitioner claimed that he came to know very recently about the pendency of the suit and filed vakalatnama and the written statement with a prayer that the written statement of



the petitioner be admitted and he be allowed to contest the suit. The plaintiff questioning the petition of the defendant-petitioner stated that the written statement was signed by defendant No.1 on 22.03.2016 but the same was filed on 22.04.2016. It is further stated that from perusal of the record that although defendant Nos.1, 2 and 3 made their appearance through their counsels on 27.06.2014 but they absented themselves and allowed the suit to proceed ex parte in their absence. Defendant No.4 also did not appear and substituted service of notice was made by publication of notice in the local daily newspaper. Learned Senior Civil Judge III after hearing both sides found that the petitioner made false statement with regard to his appearance in the Court. In fact, the petitioner had appeared on 27.06.2014 and also he was represented through his lawyers on many dates but the petitioner did not file any written statement, accordingly, dismissed the petition of the petitioner by the impugned order and did not allow him to contest the suit after admitting the written statement.

Learned counsel for the petitioner submits that learned Senior Civil Judge has erroneously rejected the petition of the petitioner without taking into consideration the fact that if the petitioner is not allowed to contest the suit that will cause irreparable loss and occasion in failure of justice. Order VIII Rule



1 C.P.C. mandates that the defendant shall file written statement within 30 days from the date of his appearance and thereafter 90 days was allowed to file written statement but the same is not mandatory. Of course, the petitioner did not file the written statement within time after his appearance but if the petitioner is not allowed to contest the written statement, the petitioner would suffer irreparable loss and that will result in failure of justice. Therefore, in the interest of justice, I find that the learned Senior Civil Judge III, Patna has committed jurisdictional error by not allowing the petitioner to contest the suit after admitting his written statement.

Accordingly, the order dated 26.10.2016 is set aside. Petitioner caused delay of more than two years. Therefore, the cost is quantified to Rs.10,000/-. Accordingly, the petitioner is allowed to contest the suit after admitting his written statement subject to the condition that petitioner shall pay a cost of Rs.10,000/- to the plaintiff within two months from the date of receipt of this order. Accordingly, this civil miscellaneous is allowed.

**(Prabhat Kumar Jha, J)**

Saurabh/-

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