

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3213 of 2012

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Kamal Kishore Choudharyson of Late Ram Das Choudhary, resident of village –
Kesopur Bakari, PO+ PS-Udwant Nagar, District-Bhojpur.

.... Petitioner/s

Versus

Rishikesh Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Kumar, Adv.

For the Respondent/s : Mr. Rama Kant Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 30-08-2018

Petitioner before this Court is defendant in Title Suit No. 103 of 2004 pending before the court of Sub-Judge-VI, Arrah. He has filed this application for quashing the order dated 05.05.2009 whereby and whereunder prayer to accept his written statement was rejected.

2. Heard learned counsels for the petitioner and the respondents.

3. It appears that the respondent no. 1 filed the aforesaid suit for declaration of his right and title over the land in question. After service of summons the court below as per order dated 05.03.2005 fixed the case for *ex parte* hearing against the petitioner. The petitioner after getting information about *ex parte* hearing appeared and filed a petition to recall the said order which was rejected on 07.03.2006. Thereafter, this petitioner filed a civil revision



application bearing no. 824 of 2006 before this Court. The said revision was heard and disposed of as per order dated 28.07.2008. The petitioner-defendant was directed to pay a cost of Rs.5,000/- to the plaintiff within a period of three months from the date of receipt/production of a copy of this order in order to compensate the plaintiff, the loss sustained by him on account of delay caused by the defendant for a period of more than four years in disposal of the suit. This Court further observed that the failure on the part of the defendant to pay such cost within the aforementioned period would disentitle him to contest the suit. The said order was received by the court below on 20.09.2008. This petitioner as per direction of this Court deposited the cost of Rs.5,000/- in the court nazarat and a receipt bearing no. 286 dated 05.12.2008 was filed before the court below on 05.12.2008. This petitioner filed a petition for granting time for filing written statement which was allowed and the next date was fixed 03.01.2009 for filing written statement and accordingly written statement was filed on 03.01.2009.

4. It has been submitted that the petitioner has already deposited the amount of cost awarded by this Court within the time allowed by this Court and his prayer to file written statement was also allowed. The petitioner has filed written statement on 03.01.2009 which was not accepted by the court below although it was filed



within the period as directed by the court below.

5. On going through the order sheet of learned court below, I find that the petitioner had deposited the cost within the period granted by this Court and written statement was filed on 03.01.2009 as per direction of learned court below vide order dated 05.12.2008. In this view of the matter the impugned order refusing to accept the written statement is not sustainable and is accordingly set aside. The court below is directed to accept the written statement.

6. This application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
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