

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23887 of 2013

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1. Sikandar Prasad Son Of Karu Yadav Resident Of Village Baswan Bigha, P.S. Bihar Sharif, District Nalanda. At Present Resident Of Mohalla Baradari, College Road, Bihar Sharif, Nalanda

.... Petitioner

Versus

1. Lal Babu Prasad @ Lal Bahadur Prasad Son Of Late Ram Ratna Prasad Resident Of Mohalla Naisarai (Narshalganj), Resident Of Mohalla Kadamkuan, Jahaji Kothi, Chiraiyatand, Budh Nagar, Road No. 1, P.S. Kankarbagh, Patna

2. Krishnandan Prasad Son Of Chandrika Prasad Resident Of Village Tartar, Ghoswari, District Patna. At Present Resident Of Mohalla Baradari College More, P.S. Bihar Sharif, District Nalanda

3. Ajay Prasad Yadav Son Of Ramji Yadav Resident Of Mohalla Gauragarh, P.S. Bihar Sharif, District Nalanda

4. Krishnandan Prasad Son Of Late Bhikhari Mahto Resident Of Village Mustafapur, P.S. Rahui, District Nalanda

5. Nand Kishore Prasad @ Raj Kumar Son Of Late Ram Ratna Prasad Resident Of Mohalla Chiraiyatand, Budha Nagar, Road No. 1, P.S. Kankarbagh, District Patna

6. Raj Kishore Prasad Son Of Late Ram Ratna Prasad Resident Of Mohalla Chiraiyatand, Budha Nagar, Road No. 1, P.S. Kankarbagh, District Patna

7. Kamal Kishore Prasad Son Of Late Ram Ratna Prasad Resident Of Mohalla Chiraiyatand, Budha Nagar, Road No. 1, P.S. Kankarbagh, District Patna

8. Chinta Devi Daughter Of Late Ram Ratna Prasad, Wife Of Chhote Lal Resident Of Mohalla Sohsarai, P.S. Sohsarai, District Nalanda

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Vidya Sagar Prasad, Advocate

For the Respondent/s : Mr. Raj Kishore Prasad, Advocate

Mr. Suresh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 23-04-2018

This writ application has been filed for quashing the order dated 20.05.2013 passed by learned Subordinate Judge-VII, Bihar Sharif (Nalanda) in Title Suit No.235 of 2010 whereby and whereunder the learned Subordinate Judge rejected the petition of the petitioner filed for accepting written statement after condoning the



delay. The petitioner has further prayed to quash the order dated 29.08.2013 whereunder the learned Subordinate Judge rejected the petition of the petitioner filed on 19.06.2013 for accepting the written statement after condoning the delay on the similar ground which was taken in earlier petition dated 28.11.2012.

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

3. The respondent 1st set filed the aforesaid title suit for declaration of title over the suit property mentioned in Schedule I of the plaint and injunction restraining the defendant 1st set from interfering in his possession and alienating the suit property during the pendency of the suit. In pursuance of notice the defendant-petitioner appeared and filed a petition under Order VII Rule 11 read with Section 151 of C.P.C. on 22.12.2010. The respondent 1st set (plaintiff) filed rejoinder and after hearing, the learned court below rejected the petition as per order dated 04.02.2012. The petitioner filed time petition on 27.06.2012 which was allowed only for that day and the case was directed to be listed on 07.08.2012. The defendant filed his written statement on 11.07.2012 and a petition on 28.11.2012 praying therein to accept the written statement after condoning the delay. The plaintiff-respondent 1st set filed rejoinder and the court below after hearing both sides rejected the petition as per order dated 20.05.2013.



Thereafter the petitioner filed another petition on 19.06.2013 to accept the written statement which was also rejected as per order dated 29.08.2013.

4. The learned counsel for the petitioner submitted that the court below has rejected the petition ignoring the settled principles of law and without appreciating the actual aspect of the matter. The time petition filed by the petitioner was allowed as per order dated 27.06.2012 and the case was fixed on 07.08.2012. The petitioner filed written statement on 11.07.2012 i.e. after a delay of only 14 days from the date of allowing time petition.

5. The learned counsel for the respondents, on the other hand, supported the observation of the court below in rejecting the written statement.

6. Perused the record. It appears that the plaintiff filed the suit on 04.10.2010. It was admitted on 05.10.2010 and office was directed to issue summons on filing requisites fixing 16.11.2010 for appearance of the defendants. The plaintiff filed requisites on 07.10.2010 and summons were issued. The defendants appeared and filed a time petition on 29.11.2010 stating therein that one of the family members of defendant has been moved to Delhi for treatment and so it was not possible for him to file written statement and objection petition to the petition filed by the plaintiff for appointment



of Advocate Commissioner. The petition for appointment of Advocate Commissioner was allowed and the office was directed to issue writ to the Advocate Commissioner. The defendant filed petition for time on 08.12.2010 which was allowed by the court below. It further appears that the time petition filed by defendant on 27.06.2012 was allowed and the next date was fixed on 07.08.2012. The plaintiff was directed to comply the order dated 26.03.2012 whereunder he was directed to file requisites for issuance of summons against the defendants who had not appeared till the date.

7. In this regard the learned counsel for the petitioner cited ruling reported in **Kailash vs. Nanhku and Ors. (2005) 4 Supreme Court Cases 480** wherein the Apex Court at paragraph 45 has observed as follows:-

“.....no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. The conclusions have been summed up in Para 46. the relevant portion reads as follows:

(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement



beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended.....”

8. The learned counsel further relied on ruling reported in **2007(4) P.L.J.R. 106 (SC)** wherein the Apex Court at paragraph 9 has observed as follows:

“All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.”

9. The Hon’ble Apex Court, in the said case, at paragraph 14 has further observed that:-



“It is also to be noted that though the power of the Court under the proviso appended to Rule 1 of Order VIII is circumscribed by the words - "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.”

10. In the case in hand, I find that the petitioner filed time petition on 27.06.2012 which was allowed and the record was ordered to be listed on 07.08.2012. This petitioner filed his written statement on 11.07.2012 without waiting the fixed date. The first petition of defendant filed on 28.11.2012 was rejected on 20.05.2013 on the ground that the written statement was neither supported with an affidavit nor it contained the signature of defendant no.1. Thereafter the petitioner filed second petition on 19.06.2013 supported with an affidavit praying therein to condone the delay in filing the written statement which was rejected on 29.08.2013 observing that the said petition has been filed with the same averments which was already pleaded in his earlier petition. This observation of court below is against the materials on record because the earlier petition was rejected as the same was not supported with an affidavit. It further



appears that the delay in filing the written statement by this petitioner did not cause any prejudice to the plaintiff as the suit was pending for appearance of other defendants. As per the order dated 26.03.2012 the plaintiff was directed to file requisites of summons for appearance of other defendants. The order sheet shows that on the following date i.e. on 27.03.2012 both parties were absent and the plaintiff was again directed to comply the direction of court given on 26.03.2012. On the next date i.e. on 18.05.2012 the plaintiff did not appear and the defendant filed time petition which was allowed. The plaintiff filed a petition for substituted service by publication in daily newspaper and a time petition was filed by the defendant for filing written statement which was again allowed on 18.06.2012. Thus, it is apparent that the court below itself granted adjournment to the petitioner for filing written statement. This petitioner cannot be held solely responsible for delay in filing the written statement. The case was pending for appearance of other defendants also for which the plaintiff filed petition for substituted service by publication in daily newspaper. So it cannot be said that the defendant caused any hindrance in disposal of suit. The provision of Order 8 Rule 1 has been held directory in nature. The materials on record show that the defendant-petitioner caused delay of 14 days in filing written statement as per the order dated 27.06.2012 passed by the court below. The petitioner did not



commit any laches deliberately in filing written statement rather other circumstances are also responsible in filing the written statement after such a delay.

11. In view of above discussions, the impugned order refusing to accept the written statement is set aside. The court below is directed to accept the written statement filed by the defendant-petitioner and proceed with the said suit expeditiously without any further delay. This writ application is, accordingly, allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.04.2018
Transmission Date	

