

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1446 of 2016**

Sushil Kumar Sarkar

... .. Petitioner/s

Versus

Smt. Shyama Devi & Ors.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Amarendra Narayan
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 20-11-2018 Heard Mr. Amarendra Narayan, learned counsel for the petitioner and Mr. Sukumar Sinha, learned senior counsel for the respondents.

The petitioner filed this civil miscellaneous petition to set aside the order dated 22.08.2016 passed by learned Sub Judge IV, Darbhanga in Partition Suit No.320 of 2014 by which the Court accepted the written statement filed on behalf of the defendant Nos.23 and 24 on payment of cost of Rs.800/-.

The petitioner is the plaintiff. Learned counsel for the petitioner assailed the order impugned on the ground that the defendant Nos.23 and 24 appeared and even after 90 days from their appearance they did not file any written statement. On 07.01.2016, the defendant Nos.23 and 24 filed petition praying for time to file written statement but the same was rejected on the ground that more than 90 days had already elapsed from the



date of appearance of defendant Nos.23 and 24 and no further time can be granted. By the same order, the learned Court debarred the aforesaid two defendants to file written statement but again the defendants filed written statement on 25.07.2016 with a petition for permission to accept the written statement and by the impugned order, the learned Court without giving any reasons accepted the written statement. It is submitted that Hon'ble Supreme Court in the case reported in (2004)5 Supreme Court Cases 480 has held that the Court is duty bound to assign reasons for accepting written statement filed beyond the mandatory period of 90 days and thus, the order is not sustainable in the eye of law but on perusal of the records and the order impugned, I find that learned Sub Judge has accepted the written statement of defendant Nos.23 and 24 on payment of cost of Rs.800/-. The suit is still pending for appearance of other defendants. The provisions for filing written statement by the defendants from the date of appearance is discretionary and the Court has got every power to condone and accept written statement even after lapse of 90 days from the date of appearance of the defendants. By accepting written statement at the cost of Rs.800/-, I find that no injury is caused to the plaintiff and the order does not require any interference.



Accordingly, I find no merit in this civil
miscellaneous petition and the same is dismissed as devoid of
any merit.

(Prabhat Kumar Jha, J)

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