

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.250 of 2019

1. Vijay Kumar Seth @ Vijay Kumar aged about 47 years Male son of Late Ramji Seth
2. Rahul Seth @ Durgesh Kumar, aged about 15 years Male Minor Son of Vijay Kumar Seth U/G of Vijay Kumar Seth, Father and Guardian)

Both are resident of Near Kali Asthan, Railway Malgodam, Mohaniya, P.S. Mohaniya, District- Kaimur (Bhabhua), Bihar

... ..Defendants/ Petitioners

Versus

1. Dr. Birendra Kumar Seth aged about 56 years Male, Son of Late Ramji Seth
2. Ranjan Kumari aged about 27 years Female Daughter of Dr. Birendra Kumar Seth
3. Anu Kumari aged about 25 years Female Daughter of Dr. Birendra Kumar Seth
4. Shalu Kumari aged about 23 years Female Daughter of Dr. Birendra Kumar Seth

All respondent nos. 1 to 4 are resident of Near Kali Asthan, Railway Malgodam, Mohania, P.S. Mohania, District- Kaimur (Bhabhua), Bihar

...Plaintiffs-Respondents 1st Set.

5. Gopal Seth aged about 50 years Male Son of Late Ramji Seth
6. Ajay Kumar Seth aged about 46 years Male Son of Late Ramji Seth
7. Sanjai Kumar Seth aged about 44 years Male Son of Late Ramji Seth
8. Most. Chameli Kuer aged about 66 years Female W/o Late Ramji Seth
9. Dipak Kumar Seth aged about 21 years Male son of Ajay Kumar Seth
10. Vivek Kumar Seth aged about 16 years Male, Minor son of Ajay Kumar Seth
11. Puja Kumari aged about 19 years Female daughter of Ajay Kumar Seth
12. Prabhawati Devi aged about 45 years Female W/o Gopal Seth

All respondent nos. 5 to 12 are resident of Near Kali Asthan, Railway Malgodam, Mohania, P.S. Mohania, District- Kaimur (Bhabhua), Bihar

....Defendants-Respondents 2nd Set.

13. Rameshwar Sah aged about 41 years Male son of Late Basdeo Sah
14. Kameshwar Sah aged about 39 years Male son of Late Basdeo Sah
15. Parmeshwar Sah aged about 36 years Male son of Late Basdeo Sah
16. Arvind Sah aged about 31 years Male son of Late Basdeo Sah
17. Gopichand Sah aged about 68 years male, son of Late Basdeo Sah

All respondent nos. 13 to 17 are resident of Village- Barej, P.S. Mohania,



District- Kaimur (Bhabhua), Bihar

... Defendants-Respondents 3rd Set.

... Respondents

Appearance :

For the Petitioners : Mr.Navin Kumar Singh, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 19-04-2019

This application under Article 227 of the Constitution of India has been filed by the petitioners challenging the order dated 18.12.2018 passed by learned Sub-Judge-VIII, Civil Court, Kaimur (Bhabhua) in Title Suit No. 213 of 2006 whereby learned Sub-Judge-VIII has allowed the defendants-respondents to file written statement.

2. Learned counsel for the petitioners submitted that the court below has travelled beyond its jurisdiction and modified the order of this Court without leave of the court by allowing filing of the written statement beyond the stipulated time. Thus, it has made an error of procedural law. Hence, it is a fit case to invoke supervisory jurisdiction under Article 227 of the Constitution of India and set aside the order impugned.

3. The facts of the case, in brief, are that the respondents 1st set here are plaintiffs of the Title Suit No. 213 of 2006. Respondents 2nd set and respondents 3rd set are defendants of the aforesaid title suit. The respondents 3rd set have been added



party as defendants in the title suit by the order of this Court dated 11.09.2017 passed in CWJC No. 17620 of 2012.

4. The operative part of the order dated 11.09.2017 passed in CWJC No. 17620 of 2012 reads as under :

“In the result, this writ application is allowed. The impugned order is set aside. The intervention application filed by the petitioners is allowed and they are made party-defendant in the suit.

The learned counsel, Mr. Mahesh Prasad No.2 appearing on behalf of the petitioners submitted that he will file written statement within one month from the date of receipt of a copy of this order by the court below.”

5. In this background, respondent 3rd set filed written statement on 04.12.2017.

6. The petitioners are aggrieved because of the filing of the written statement, which has been accepted by the trial court beyond one month from the date of the order passed in CWJC No. 17620 of 2012.

7. It is true that the written statement has not been filed within one month from the date of receipt of a copy of the order dated 11.09.2017 passed in CWJC No. 17620 of 2012. However, the same alone would not make the order passed by the



trial court bad in law. This Court vide order dated 11.09.2017 passed in CWJC No. 17620 of 2012 had not issued any direction to the respondents 3rd set to file written statement within one month from the date of receipt of a copy of the order by the court below rather it was one of the submissions of the learned counsel appearing for the petitioners in that case.

8. The written statement is filed by a party in suit under Order 8 Rule 1 of the Code of Civil Procedure, which provides that the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence and the proviso to Order 8 Rule 1 provides that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons.

9. Thus, it would be evident that proviso to Order 8 Rule 1 confers jurisdiction upon the court to entertain a written statement filed by the defendant after 30 days, but the same should not be later than 90 days from the date of service of summon.

10. Here, in the present case, after the defendants-respondents 3rd set were impleaded as party pursuant to the order



passed by this Court in CWJC No. 17620 of 2012, the written statement has been filed within 90 days and the trial court has assigned specific reasons in its order for allowing the defendants-respondents 3rd set to file written statement. It has also imposed cost of Rs.500/-while allowing the defendants-respondents 3rd set to file written statement.

11. Under the circumstances, I see no reason to interfere with the order impugned under the supervisory jurisdiction under Article 226 of the Constitution of India.

12. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2019
Transmission Date	NA

