

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14997 of 2010

=====

Dhanik Lal Yadav, S/O Late Shyam Yadav, R/O Village- Deodhi, P.S.
Hassanpur, Distt- Samastipur

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur
2. General Manager (Engineering) East Central Railway, Hajipur
3. Divisional Rail Manager, East Central Railway, Samastipur
4. Divisional Rail Manager (Engineering) East Central Railway, Samastipur
5. Assistant Engineer, East Central Railway, Samastipur
6. Inspector of Works (Line), East Central Railway, Samastipur
7. General Manager (Commercial), East Central Railway, Hajipur
8. Divisional Rail Manager (Commercial) East Central Railway, Samastipur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Pushkar Narain Shahi, Sr. Advocate Ms. Shivam, Advocate
For the Respondent/s	:	Mr. Dr. Anand Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 12-04-2019 Heard learned counsel for the petitioner and the respondents.

2. The present writ application has been filed by the petitioner for setting aside the order dated 29.01.2010 passed by the Civil Judge, Junior Division in Title Suit No. 90 of 2006.

3. Mr. P. N. Shahi, learned senior counsel appearing on behalf of the petitioner submits that the respondents failed to file written statement and such they were debarred from filing written statement. After debarment, the respondents filed



application for recall of the order debarring them from filing written statement and that application was also rejected by the court below. After rejecting the order for recall of the order debarring the respondents-defendants to file written statement, one application was filed in the name and stile of show-cause in injunction matter and on that application, the court below has virtually reviewed the earlier order and allowed filing of written statement on payment of cost of Rs.2,000/-.

4. Learned counsel for the respondents submits that for the ends of justice, even after expiry of the period prescribed for filing written statement, the court may in appropriate cases entertain written statement after expiry of the time prescribed. He placed reliance on the judgment of the Apex Court in the case of **Zolba Vs. Keshao & Others**, reported in **(2008) 11 SCC 769**.

5. The judgment of the Apex Court is relevant for the purpose of exercising discretion in the matter of entertaining written statement after expiry of the period prescribed.

6. It is no answer to the situation involved in the present case. In the present case, the court below has debarred the defendants from filing written statement. After debarment, when application was filed for recall of that order, the same was



also rejected by the court below and thereafter while deciding injunction petition the defendants were granted permission to file written statement on payment of cost of Rs.2,000/-.

7. The law is well settled that what one cannot do directly is not permitted to do indirectly as exercising of jurisdiction in such a situation is held to be fraud in power. Reference in this connection may be made to the Constitution Bench judgment in the case of **Dr. D.C. Wadhwa & Ors vs State of Bihar & Ors**, reported in **AIR 1987 SC 579**.

8. Dr. Anand Kumar next placed reliance on the judgment of the Apex Court in the case of **R. N. Dai & Brothers & Ors Vs. Subhash Chandra**, reported in **(2007) 6 SCC 420**. This judgment is also on the same line like **(2008) 11 SCC 769** that after the expiry of period prescribed for filing written statement, the Court may exercise discretion and entertain the written statement filed beyond the period prescribed in appropriate cases.

9. There is no quarrel on the point that the Court discretion is very wide in entertaining written statement after expiry of 90 days, but when court below had debarred filing of written statement and refused to recall that order, it was not available to the court below to indirectly recall the order in the



name of passing order in injunction.

10. Mr. Shahi, learned counsel for the petitioner, appears to be correct in his submission that debarment does not cause prejudice to the defendants, as defendants have every right to examine the witnesses, cross-examine the witnesses of the plaintiff and may place the all available submissions at the time of its adjudication.

11. In view of the discussions made herein above, the present application is allowed. The order dated 29.01.2010 passed by the court below is set aside. The matter is remitted back to the court below for adjudication of T.S. No. 90 of 2006 at the earliest by providing opportunity to the parties to lead evidence and cross-examine the respective witnesses and after hearing the parties the court below shall decide the Title Suit at the earliest preferably within a period of six months from the date of receipt/production of a copy of this order.

12. With the aforesaid, this application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

uday/-

U			
---	--	--	--

