

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.802 of 2012

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1. Diwakar Prasad @ Diwakar Pd. Verma, son of late Harishankar Prasad
 2. Rajesh Prasad @ Rajesh Pd. Verma, son of late Harishankar Prasad
 3. Shakuntala Devi @ Shankuntala Verma, wife of Late Sachidanand Prasad
 4. Shanti Prasad @ Shanti Swarup, son of Late Sachidanand Prasad
 5. Jyoti Swarup, son of Late Sachidanand Prasad
 6. Suresh Prasad, son of late Braj Kishore Prasad
 7. Radha Devi, wife of late Shyam Narayan Prasad
 8. Ajay Kumar @ Pappu, son of Late Shyam Narayan Prasad
 9. Sanjay Kumar, son of Late Shyam Narayan Prasad
 10. Rajiv Kumar, son of Late Shyam Narayan Prasad
 11. Bipin Bihari Prasad, son of late Raghu Nath Prasad
 12. Ashok Kumar Verma, son of late Gauri Shankar Prasad
 13. Pratima Devi, daughter of late Gauri Shankar Prasad
 14. Savitri Devi wife of late Uma Shankar Prasad
 15. Rudresh Kumar, son of late Uma Shankar Prasad
 16. Dinanath Prasad @ Dinanath, son of late Uma Shankar Prasad
 17. Akhilesh Prasad @ Akhilesh Kumar, son of late Uma Shankar Prasad
 18. Lal Mati Devi, wife of late Birendra Prasad
 19. Ratna Devi, daughter of late Birendra Prasad
 20. Rambha Devi, daughter of late Birendra Prasad

All are residents of Village & P.O.- Mirzapur, P.S. Patahi, District- East Champaran.

. . . . Defendants 1st Party- Petitioners.

Versus

1. Ram Naresh Prasad, son of late Shiv Nath Prasad, resident of Village & P.O.- Mirzapur, P.S. Patahi, District- East Champaran at present of Raja Bazar, West of Gopalpur, Motihari, P.S.- Motihari, District- East Champaran.
2. Harendra Prasad, son of late Surya Nandan Lal, resident of Village- Nariyar Panapur, P.O.- Nariyar, P.S.- Kanti, District- Muzaffarpur, Nanihal Village & P.O.- Mirzapur, P.S. Patahi, District- East Champaran
3. Sashi Bhusan Prasad, S/o late Ram Babu Prasad @ Madan Mohan Prasad,
4. Braj Bhusan Prasad, S/o late Ram Babu Prasad @ Madan Mohan Prasad
5. Madhu Bhusn Prasad, S/o late Ram Babu Prasad @ Madan Mohan Prasad
6. Arvind Kumar Shrivastava, S/o late Ram Babu Prasad @ Madan Mohan Prasad
7. Bashishth Narayan Prasad, son of late Ramanand Prasad

Respondent Nos. 3 to 7 are residents of Village & P.O.- Mirzapur, P.S. Patahi, District- East Champaran

.....Defendants-Respondents

Appearance :

For the Petitioner/s	:	Mr.Shashi Shekhar Dvivedi, Sr. Advocate Mr. Parth Gaurav, Advocate
For the Respondent/s	:	Mr.



CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

11 06-05-2019 Heard Mr. Shashi Shekhar Dvivedi, learned senior counsel appearing on behalf of the petitioners.

2. Despite valid service of notice, the private respondents have not chosen to file any counter affidavit.

3. On 19.04.2019, the Court has taken note of the submissions advanced on behalf of petitioner. Para 3 and 4 of the order dated 19.04.2019 is infact pertains to framing of issue invovled in the case, which is quoted herein below:

“3. The main contention of Mr. S. S. Dvivedi, learned senior counsel appearing on behalf of the petitioners is that order of debarment is contrary to the settled practice inasmuch as the transferee court has not issued notice on transfer of the case for appearance of the defendants and as such without notice to the defendants, the order of debarment and fixing the date of hearing ex-parte has been passed. So far as debarment is concerned in terms of the amended provision the written statement is required to be filed by the defendants within 90 days and it appears that there is delay, however, there are judgment to the effect that the court in appropriate cases may extend the period of filing of written statement beyond the period of 90 days.

4. So far as the issue as to fixing of



the case for ex-parte hearing is concerned that order prima facie appears to be contrary to the well settled practice, as the court is required to give notice before fixing the case for ex-parte hearing indicating that failure to appear on the date fixed, the court may pass order for ex-parte hearing.”

4. Pursuant to order dated 19.04.2019, a supplementary affidavit has been filed on behalf of the petitioners enclosing the order-sheet and the petition filed by the petitioners for recall of the order, which was rejected vide order dated 06.03.2009.

5. From perusal thereof, it would be manifest that the court below has committed error of jurisdiction in passing the order impugned in the present case as noted in the order dated 19.04.2019. The Court finds substance in the submission of Mr. Shashi Shekhar Dvivedi, learned senior counsel appearing on behalf of the petitioners that the transferee court is required to give notice and only after notice the transferee court was required to pass any order, which is not done in the instant case and as such the order passed by the transferee court is not in the tune with the settled practice.

6. Additionally the Court also finds substance in the submission of Mr. Shashi Shekhar Dvivedi, learned senior counsel appearing on behalf of the petitioners that in appropriate



cases the court may enlarge the time for filing written statement, and 90 days time for filing written statement can be enlarged in appropriate cases. No reason was assigned by the court below for refusing extension of time and rejecting the application for recall of the order debarring filing of written statement.

7. In addition thereto the court finds substance in the submission of the petitioners that before posting the case for ex-parte hearing, the court was required to give notice to the petitioners that if they failed to appear on the next date the case may be fixed for ex-parte hearing that was not done in the instance case.

8. For the reasons discussed herein above, the writ application is allowed and the order dated 06.03.2009 is set aside. The matter is remitted to the Court below for fresh adjudication on the application filed by the petitioner for recall of the order of debarment of filing written statement in accordance with law.

9. Necessary decision in this regard must be taken by the court below within a period of 60 days from the date of receipt/production of a copy of this order and thereafter decide the suit on its own merit within a maximum period of six months after the decision on the application for recall of the



order debarring the petitioners from filing written statement.

10. With the aforesaid, this application is allowed and
disposed of.

(Anil Kumar Upadhyay, J)

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