

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1645 of 2019**

Mahadeo Sah S/o Late Ram Khelawan Sah Resident of Mohalla- Bibiganj,
P.S.- Sadar, P.O.- M.I.T., District- Muzaffarpur.

... .. Appellant/s

Versus

1. Pawan Kumar S/o Vishwanath Sah Resident of Village- Dhamauli Ramnath, Tole Kaparpura, P.O.- Kaparpura, P.S.- Kanti, District- Muzaffarpur.
2. Amar Mehta S/o Indra Mohan Prasad Resident of Village- Laskaripur, P.O.- Laskaripur, P.S.- Kanti, District- Muzaffarpur.
3. Arjun Kumar S/o Mahadeo Prasad Resident of Mohalla- Bibiganj, P.S.- Sadar, P.O.- M.I.T., District- Muzaffarpur, at present at Village- Bhelaipur Jitwar, P.O.- Bhelaipur, P.S.- Minapur, District- Muzaffarpur.
4. Ragini Kumari W/o Ajeet Kumar Resident of Village- Dhamaul Ramnath, Tole Madhuban, P.O. and P.S.- Kanti, District- Muzaffarpur.
5. Ajeet Kumar S/o Late Gaya Choudhary Resident of Village- Dhamaul Ramnath, Tole Madhuban, P.O. and P.S.- Kanti, District- Muzaffarpur.
6. Pratyush Pranjal S/o Ajeet Kumar Resident of Village- Dhamaul Ramnath, Tole Madhuban, P.O. and P.S.- Kanti, District- Muzaffarpur.
7. Baby Devi W/o Sunil Kr. Sharma Resident of Village- Vishunpura, P.S. and P.O.- Saraiya, District- Muzaffarpur.
8. Sunil Kumar Sharma S/o Late Balaji Pd. Sharma Resident of Village- Vishunpura, P.S. and P.O.- Saraiya, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pradhan Murli Manohar Prasad, ADv
Mr. Pramod Kumar Singh

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 08-01-2020

Heard learned counsel for the petitioner.

2. The present application has been filed for the following reliefs as formulated by the petitioner --

“(i) For setting aside the order dated 29.08.2019 passed by learned Sub Judge Ist (East), Muzaffarpur in Title Suit No. 812/2017 by which inter alia the learned Court below has been pleased to allow the



petition filed by the defendant no.4 to 8 dated 24.04.2019 for allowing them to file written statement in Title Suit No. 812/2017 pending before the learned Sub Judge Ist, East, Muzaffarpur.

(ii) For stay the function of the order dated 29.08.2019 passed by learned Sub Judge Ist (East), Muzaffarpur in Title Suit No. 812/2017.

(iii) For any other relief/reliefs for which the petitioner is found entitled by the Hon'ble Court."

3. Learned counsel for the petitioner submits that notices were issued to the defendants/respondents pursuant to which defendant nos. 2 and 3 filed their respective written statement on 09.03.2018 and 28.09.2018. It is stated that despite the defendant nos. 4 to 8 having appeared in the suit on 23.08.2018, they did not file their written statement within the statutorily stipulated time. It is stated that after considerable delay, the defendant nos. 4 to 8 filed a petition on 24.04.2019 seeking permission to file their written statement, which has been allowed by the impugned order. It is submitted that the impugned order thus runs contrary to the provisions of Order VIII Rule 1 which contemplates a maximum of extended time of 90 days from service of summons for filing of written statement.

4. Having heard learned counsel for the plaintiff/petitioner and on consideration of the materials on record, this Court finds the petition to be devoid of merit. It is well settled through numerous judicial decisions of the Hon'ble Supreme Court that the stipulated time under Order VIII Rule 1 for filing written statement is directory and not mandatory. It has been observed that the said provision is procedural in nature and not part of the substantive law. The rule in question has to advance the cause of justice and not to defeat it. Construction of a rule or procedure which promotes justice and



prevents miscarriage has to be preferred. The rules of procedure are handmaid of justice and not its mistress. Reference in this behalf may be made to the decisions reported in the case of *Salem Advocate Bar Association, Tamil Nadu v. Union of India, AIR 2005 SC 3353* and *Rani Kusum v. Kanchan Devi, AIR 2005 SC 3304*.

5. In the above circumstances, this Court is not inclined to interfere in the matter. The petition stands dismissed.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2020
Transmission Date	NA

