

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.712 of 2023

M/s Kraft Outdoor Media Pvt. Ltd. a company registered under the Company Act, through its Director Mishel Kumar, having registered office at 5th Floor, Abhay Bhawan, Fraser Road, P.S.-Kotwali, District-Patna-1.

... .. Petitioner/s

Versus

1. M/s Pratibha Advertising Pvt. Ltd. a company registered under Company At having its registered office at 432, 4th Floor, Adision Arcade, Fraser Road, P.S.-Kotwali, Patna-1.
2. M/s Harrison Continental Pvt. Ltd. a company registered under Company Act entrusted/subletted by Pratibha Advertisement Pvt. Ltd. having its registered office at 1/40 Housing Colony P.S.-Kankerbagh, Patna-800020 and presently at Fraser Road, P.S.-Kotwali, Patna-1.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Adv. Mr. Sangeet Deokuliar, Advocate Mr. Girish Pandey, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 21-12-2023 In the instant petition, petitioner has prayed for the following relief(s):-

“(i) That, by way of the present petition under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure 1908 (hereinafter referred to as “the CPC”) the petitioners are challenging the legality and validity of order dated 07.12.2022 (herein after referred to as “the impugned order”) passed by the learned Sub-Judge-1st, Patna (herein after referred to as Learned Trial Court), in Eviction Suit No. 72 of 2018 (herein after referred to as “the Eviction Suit”), seeking inter-alia the setting aside/quashing of the impugned order, whereby the Learned Trial Court rejected the plaintiff’s/petitioner’s application/petition dated 26.02.2021 wherein the plaintiff/petitioner had prayed that the defendants/opposite parties be barred from filing



their written statement, as amended by the legal principle that where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the court shall pronounce judgment against him, or make such order, in relation to the suit as it thinks fit and on pronouncement of such judgment a decree shall be drawn up. However grace period of 90 days is granted for the reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. Beyond 120 days, from the date of services of summons, the defendants shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.

(ii) The “Learned Trial Court” has in the teeth of the aforesaid principle of law, rejected the aforesaid plaintiff’s/ petitioner’s petition on illegal and nonest grounds.”

2. Learned senior counsel submits that he does not want to press the application in the light of the decision of the Hon’ble Supreme Court in the case of ***Kailash vs. Nanhku & Ors.***, reported in ***(2005) 4 SCC 480***. Paragraph no. 41 reads as under:-

“41. Considering the object and purpose behind enacting Rule 1 or Order 8 in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact- the entire life and vigour- of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as



they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidate may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.”

3. Learned senior counsel submits that since the said provision regarding forfeiture of right on non-filing of the written statement has been held to be directory and not mandatory. Learned senior counsel further submitted that the learned trial court be directed to decide the eviction suit within a stipulated time limit since it is a matter of 2018.

4. In the light of prayer made on behalf of the petitioner, the instant petition is disposed of as not pressed.

5. Learned trial court is directed to proceed in the matter and dispose of the Eviction Suit No. 72 of 2018 within a period of six months from the date of receipt of a copy of this order.

(Arun Kumar Jha, J)

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