

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1006 of 2018

1. Pramod Pandey, son of Late Shubhnath Pandey, resident of Village- Sarfara, Post- Batardey, District- Gopalganj.
2. Anand Pandey @ Anand Kumar Pandey, son of Late Shubhnath Pandey, resident of Village- Sarfara, Post- Batardey, District- Gopalganj.

... .. Petitioner/s

Versus

- 1.1 Gureshwa Kumari, granddaughter of late Awadhesh Pandey, resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
- 1.2. Braj Kishore Pandey, resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
- 1.3. Avinash Pandey, resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
- 1.4. Srimat Pandey, resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
- 1.5. Rima Devi, wife of Ramchandra Chaubey, D/o late Awadhesh Pandey resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
- 1.6. Runjhun Devi, wife of Ramesh Pandey, D/o late Awadhesh Pandey resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
- 1.7. Pratibha Devi, wife of late Radha Krishna Pandey and Daughter-in- law of late Awadhesh Pandey, resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
- 1.8. Gurukripa Pandey, grandson of Late Awadhesh Pandey resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
- 1.9. Guru Mahima Pandey, grandson of late Awadhesh Pandey resident of Village Sarafara P.O.- Batardeh, P.S.- Barauti, Dist Gopalganj.
2. Keshav Pandey, son of Chaturi Pandey resident of Village- Sarfara, Post- Batardey, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Prasad Gupta, Advocate
For the Respondent/s	:	Mr. Nityanand Mishra, Advocate
		Mr. Alok Abhinav, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

16 21-08-2023

Heard learned counsel for the parties.



2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 22.05.2018 passed by learned Sub Judge-I, Gopalganj by which the petition dated 16.04.2018 filed by defendants-petitioners for recalling the order dated 06.12.2017 debarring the defendants / petitioners from filing written statement has been rejected.

3. Brief facts of the case are that plaintiffs / respondents have filed Title Suit No. 1098 of 2015 against defendants / petitioners in which after publication of notice, petitioners appeared before the learned Court below on 17.05.2017 but despite given the sufficient time by the learned Court below, they have not filed their written statement due to which learned trial Court debarred the petitioners from filing the written statement. The petitioners filed their written statement on 27.03.2018 alongwith the petition for recalling the *ex parte* order dated 06.12.2017 with prayer to accept the written statement. It is stated in the application that they had no knowledge about filing of the written statement and they came to know about the *ex parte* order on 17.03.2018 and thereafter they prepared the written statement and filed the same before the learned trial Court. It is also stated in the petition that due to



lack of legal knowledge, the petitioners failed to file the written statement within the prescribed period. The said application has been dismissed by the learned trial Court vide the impugned order dated 22.05.2018.

4. Learned counsel for the petitioners submits that the petitioners have not deliberately delayed the filing of the written statement but it was due to lack of their legal knowledge that they have not filed the written statement within time and when they came to know about the said fact they have filed the written statement. The delay in filing written statement was only due to the communication gap between the petitioners and their pleader and petitioners shall suffer irreparable loss if the said impugned order is not set aside and written statement is not taken on record. He has referred the order dated 07.08.2017 passed by this Court in **Md. Gosh Vs. Bibi Samima Khatoon and Ors.** in which this Court has recalled the order debarring from filing the written statement subject to cost.

5. *Per contra*, learned counsel for the respondents submits that petitioners appeared only after publication of the notice in newspaper and he has deliberately delayed the proceeding of the suit. He further submits that even otherwise there is no merit in the defence of the petitioners and the reason



assigned by the petitioners is not sufficient for recalling the debarring of written statement and learned Court below has rightly rejected the recall application of the petitioners.

6. In **Kailash vs. Nankhu & Ors. (2005) 4 SCC 480**, the three Judge Bench of Hon'ble Supreme Court held that the purpose of providing the time Schedule for filing the written statement under Order VIII, Rule 1 of the Code of Civil Procedure, 1908 is to expedite and not to scuttle the hearing. The process of justice may be speed up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried. The provision spells out a disability on the defendants; it does not impose an embargo on the power of the Court to extend the time.

7. Having heard learned counsel for the parties and considering the material on record, it appears that the learned Court below in the impugned order rejected the prayer of the petitioners for recalling the *ex parte* order dated 06.12.2017 on the ground that the petitioners have not given the reasonable cause for not filing the written statement within time.

8. The law is well settled that the learned Court below can extend time for filing written statement beyond time schedule prescribed by Rule 1. However, the same shall not be



in a routine manner and to prevent the waive of justice in appropriate cases. It can be allowed by compensating the other side with cost. In the present case, the petitioners have already filed the written statement and if they are not allowed to contest the suit, it will prejudice the petitioners and may cause injustice to them.

9. Order VIII, Rule 1 of the Code of Civil Procedure helps both the plaintiffs and defendants. The plaintiff is being protected from intentional and unnecessary delay and on the other hand, the defendant is provided appropriate time to prepare and file a written statement within the prescribed period.

10. The learned Court below erroneously failed to exercise it's jurisdiction vested in it by law and did not consider that if the petitioners are not allowed to contest the suit, it will prejudice the petitioners and the plaintiffs may be compensated by imposing appropriate cost.

11. In view of the facts and circumstances of the case and considering the submissions advanced on behalf of the parties, this Civil Miscellaneous application is allowed. The impugned order is set aside and the application filed by the petitioners to recall the order debarring the petitioners from filing written statement is hereby recalled and written statement



filed on behalf of petitioners is accepted subject to payment of cost of Rs. 15,000/- to be paid by the present petitioners in the learned trial Court to the plaintiffs within six weeks.

(Sunil Dutta Mishra, J)

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