

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1294 of 2019

1. Ganga Singh, Son of Late Lakhan Mahto, Resident of Village- Malipur Pakari, P.S. and District- Sitamarhi.
2. Ram Lagan Singh @ Ram Lagan Mahto, Son of Late Lakhan Mahto, Resident of Village- Malipur Pakari, P.S. and District- Sitamarhi.

... .. Petitioner/s

Versus

1. Satya Narayan Mahto, Son of Late Sudi Mahto @ Raudi Mahto, Resident of Village Malipur Pakari, P.S. and District Sitamarhi.
2. Nirmala Devi, Daughter of Late Sudi Mahto @ Raudi Mahto and Wife of Nagendra Singh, Resident of Village Balaha Rasalpur, P.S.- Bajapatti, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vaidehi Raman Prasad Singh, Advocate
For the Respondent/s : Mr. Sanjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 24-01-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed against the order dated 04.04.2019 passed by the learned Munsif, Sadar, Sitamarhi, in T.S. No. 11 of 2018, whereby he has rejected the application dated 30.01.2019, filed by petitioners-defendants for recall of the order dated 12.09.2018 (wrongly mentioned as 19.11.2018) debarring from filing their written statement in the suit.

3. The facts of this case, in brief relevant for disposal



of this application, are that the plaintiffs/respondents filed T.S. No. 11 of 2018, in the Court of the learned Munsif, Sitamarhi Sadar, for declaration of their title over Schedule-II land and for recovery of their possession of the suit land. After service of summons, the petitioners-defendants appeared in the case on 31.07.2018 and were given last opportunity on 07.09.2018 to file their written statement but defendants failed to file their written statement within time and due to that reason vide order dated 12.09.2018 the Trial Court debarred the defendants from filing of their written statement. The defendants by filing written statement filed petition for recall of the said order stating that for want of the required papers they would not filed their written statement within time. The learned Trial Court observed that the Court cannot exercise inherent power to extend the time period provided by the law and found that no sufficient cause had been shown for delay of about 4 months in filing written statement and directed the plaintiffs to proceed in accordance with Order VIII Rule 10 CPC and to give their evidence.

4. Learned counsel for the petitioners submits that the petitioners had duly explained the reason of delay in filing written statement within the prescribed time and they have the good case on merit and if the written statement is not allowed to



be taken on record the great prejudice would cause to the petitioners and the interest of justice requires the adjudication of case on merit. He further submits that the time limit to file written statement under Order VIII Rule 1 is a directory and not mandatory and the courts have the power to extend the time limit beyond 90 days grace period as well in non-commercial suits on the sufficient and valid reasons to be recorded.

5. Learned counsel for the respondents conceded that the Court has power to extend the time period. He submits that heavy cost may be imposed on the petitioners for not filing the written statement within the prescribed time period and causing delay in proceeding of the suit.

6. The *catena* of Judgments by the Hon'ble Supreme Court of India, interpreting Order VIII Rule 1 of the Code of Civil Procedure, 1908, had settled the position that the requirement to file written statement within 30 days (extendable to 90 days) of receipt of summons is directory and not a mandatory requirement. Procedural law is the handmaid of justice and not its mistress. In the decision of **Kailash vs. Nankhu (2005) 4 SCC 480** and **Salem Advocates Bar Association, T.N. vs. Union of India, (2005) 6 SCC 344**, it has been held that Order VIII Rule 1, Code of Civil Procedure, 1908



being in the domain of Procedural Law, is directory and not mandatory. Further, in **Atcom Technologies Pvt. Ltd. vs. Y.A. Chunawala (2018) 6 SCC 639** the Hon'ble Supreme Court reiterated its prior holding that when seeking condonation of delay beyond 90 days period, the defendant is required to furnish a proper and satisfactory explanation. A decision to condone delay beyond 90 days extendable period is not to be granted in a mechanical manner.

7. 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.

8. The Hon'ble Supreme Court in its order dated May 9th, 2022 in **Bharat Kalra vs. Raj Kishan Chabra** (Civil Appeal No. 3788 of 2022) has reiterated that time limit for filing the written statement under Order VIII, Rule 1 of the Code of Civil



Procedure, 1908 is not mandatory in view of the Judgment reported as *Kailash vs. Nankhu & Ors.* (supra). It is also held that the delay in filing of written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.

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. It was held in the ***Kailash vs. Nankhu*** (supra) that ordinarily, the time Schedule prescribed by Order VIII, Rule 1 has to be honoured. The defendant should be vigilant. The extension can be only by way of exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order VIII, Rule 1 of the Code of Civil Procedure was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension as required in the interest of justice, and grave injustice would be occasioned if the time was not extended.



11. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence. The Court may impose costs for dual purpose (i) to deter the defendants from seeking any extension of time just for asking and (ii) to compensate the plaintiffs for the delay and inconvenience caused to him.

12. In view of the facts and circumstances of the case and considering the submissions on behalf of the parties and the law discussed above and in the interest of justice, this Civil Miscellaneous case is allowed. The impugned orders dated 04.04.2019 and 12.09.2018 passed by learned Munsif Sadar, Sitamarhi in Title Suit Case No. 11 of 2018 are set aside. It is directed that the written statement shall now be taken on record but subject to payment of Rs. 8,000/- as agreed by the parties, by way of costs payable by the petitioners herein to respondents/ plaintiffs within a period of four weeks from receiving/producing the copy of this order in the Trial Court.

13. Hence, this Civil Miscellaneous application is



disposed of with the aforesaid direction.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	31.01.2023
Transmission Date	

