

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1381 of 2017**

**In
Civil Writ Jurisdiction Case No.18663 of 2011**

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Badri Mahto Son of Late Shiv Mahto @ Manjhi Resident of Village -Amapur,
P.O.-Ekchari, P.S.-Kahalgaon, District-Bhagalpur.

... .. Petitioner/s

Versus

1. Laxmi Manjhi @ Mahto S/o Late Bauki Manjhi @ Mahto
2. Bhujo Mandal @ Mahto, S/o Late Kishun Mandal
3. Kamaldeo Mandal, S/o Late Baldeo Mandal
4. Mahendra Mandal, S/o Late Lalji Mandal All are Resident of Village
-Amapur, P.O.-Ghogha Bazar, P.S.-Kahalgaon, District-Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anupa Nand Jha, Advocate
For the Respondent/s : Mr. Mujtabaul Haque G.P. 12, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER**

15 11-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed against the order dated 04.03.2008 passed by learned Sub-Judge VI Bhagalpur, in Title Suit No 71 of 1999 whereby the learned Court Below has dismissed the application dated 21.11.2005 for recall of order dated 05.07.2005 passed by the learned trial court in which written statement filed on behalf of the petitioner has not been accepted and the matter was fixed for hearing under Order 8 Rule 10 C.P.C.

3. Learned counsel for the petitioner submits that the plaintiff / Respondent No. 1, has filed suit being Title Suit No. 71 / 1999 praying for declaration of title in the suit land and



other reliefs in which petitioner is intervenor / defendant who was made party vide order dated 11.03.2003. Since some relevant documents were not available with the petitioner, the written statement has not been filed within time. However, he has filed the written statement on 22.11.2005 which was not accepted by learned trial court.

4. Learned counsel for the petitioner further submits that the delay of about 2 years 6 months was due to time taken in getting the relevant documents and when the petitioner got the documents, he filed the written statement. Accordingly, the delay was not deliberate but it was due to *bona fide* reasons. It is submitted that in the interest of justice, the written statement filed on behalf of the petitioner may be accepted and accordingly, this Civil Miscellaneous Application may be allowed. He has submitted that it is in the interest of justice that the Suit may be decided on merit.

5. On the other hand, learned counsel for the respondents submits that learned court below has rightly rejected the said application of the petitioner by the impugned order which is reasoned order having no illegality and not liable to be interfered by this Court under supervisory jurisdiction of this Court under Article 227 of the Constitution of India. He



further submits that the petitioner has not challenged the original order dated 05.07.2005 by which his written statement was not accepted. Accordingly, the present application against the order in review petition cannot be allowed. In this regard he has referred an order dated 01.02.2023 passed by the Division Bench of this Court in Civil Review No. 69 / 2019 in (L.P.A. No. 1603 of 2019) wherein it has been held that since there is no challenge of the original order, the appeal is not maintainable.

6. In **Kailash Vs. Nankhu & Ors. (2005) 4 SCC 480**, the three Judge Bench of Hon'ble Apex Court held 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 not for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction.

7. In the present case, it appears that petitioner was made party as defendant vide order dated 11.03.2003 but they failed to file the written statement within statutory period and the trial Court vide order dated 05.07.2005 debarred the petitioner from filing written statement. The written statement was filed after about two and half years on the ground that they had no relevant papers and documents and delay was occurred



in getting the said documents but the same were not filed with written statement or petition to show his *bona fide*. The suit was filed in year 1999 and there is inordinate delay in filing written statement, i.e. about two and half years after appearance and the reason stated for the same is not found valid.

8. Having heard the learned counsel for the parties, considered the material on record and the facts and circumstances of the case, from perusal of the impugned order, I do not find any jurisdictional error or illegality in the impugned order and no interference is required by this Court under its supervisory jurisdiction under Article 227 of the Constitution of India.

9. Accordingly, this Civil Miscellaneous Application is dismissed.

10. Stay vide order dated 15.05.2018 passed by this Court in this case stands vacated.

11. Since the Suit is of year 1999, the trial court is directed to expedite the disposal of the said suit without giving any unnecessary adjournment to the parties.

(Sunil Dutta Mishra, J)

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