

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.992 of 2018

1. Parul Sharma Wife of Mahesh Sharma, Resident of Village- Chak,P.S. Jalalgarh, District- Purnea.
2. Rakesh Sharma, Son of Mahesh Sharma, Resident of Village- Chak,P.S. Jalalgarh, District- Purnea.

... .. Petitioner/s

Versus

1. Rajendra Sharma Son of late Sohan Lal Sharma, Resident of Village- Chak,P.S. Jalalgarh, District- Purnea.
2. Smt. Tara Devi, Wife of Harichandra Sharma, Resident of Village- Sahpur, P.S. Balrampur, P.O. Dangol, District- Katihar.
3. Most. Janki Devi, D/o late Sohan Lal Sharma and Wife of late Rasik lal Sharma, Resident of Village- sahpur, P.S. Balrampur, Post Dangol, District- Katihar.
4. Jagdish Sharma, Son of late Sohanlal Sharam, Resident of Runta Field, Harehandpur, P.O. Southa, P.S. Jalalgarh, District- Purnea.
5. Manish Sharma, Son of late Sohalal Sharma, Resident of village- Chak, P.S. Jalalgarh, P.O. Sauntha, District- Purnea.
6. Dinesh Sharma, Son of late Sohanlal Sharma, Resident of Mohalla- De Academy High School Road, Forbesganj, Near Durga Mandir, Ward no .20, P.S. and Post- Forbesganj, District- Araria.
7. Bhupdev Prasad Singh, Son of Luxman Lal Singh Resident of Village- Chak,P.S. Jalalgarh, District- Purnea.
8. Sital Dev Prasad Singh, Son of Luxman Lal Singh, Resident of Village- Chak,P.S. Jalalgarh, District- Purnea.
9. Rajendra Mahto, Son of late Aju Mahto, Resident of Village- Nagar Chak, P.S. Jalalgarh, P.O. Sauntha, District- Purnea.
10. Sadanand Son of late Guna Nand Mahto, Resident of Village- Sountha, P.S. Jalalgarh, District- Purnea.
11. Ramlal Mahto, Son of late Guna Nand Mahto, Resident of Village- Sautha, P.S. Jalalgarh, District- Purnea.

... .. Respondent/s

with

CIVIL MISCELLANEOUS JURISDICTION No. 1397 of 2018

Rajendra Mahto Son of late Aju Mahto Resident of Village- Chak, P.O. Jalalgarh, District- Purnea.

... .. Petitioner/s

Versus

1. Rajendra Sharma Son of late Sohan Lal Sharma



2. Smt. Tara Devi Wife of Harichandra Sharma Resident of Village- Sahpur, P.S. Balrampur, P.O. Dangol, District- Katihar.
3. Most. Janki Devi D/o late Sohan Lal Sharma and Wife of late Rasik Lal Sharma Resident of Village- Sahpur, P.S. Balrampur, P.O. Dangol, District- Katihar.
4. Jagdish Sharma Son of late Sohanlal Sharma Resident of Runta Field, Harehandpur, P.O. - Southa, P.S. Jalalgarh, District- Purnea.
5. Mahesh Sharma Son of late Sohanlal Sharma Resident of Village- Chak, P.S. Jalalgarh, P.O. Sauntha, District- Purnea.
6. Dinesh Sharma Son of late Sohanlal Sharma Resident of Mohalla- De Academy High School Road, Forbesganj, Near Durga Mandir, Ward No. 20, P.S. and Post- Forbisganj, District- Araria.
7. Bhupdev Prasad Singh Son of Luxman Lal Singh Resident of Village- Chak, P.S. Jalalgarh, District- Purnea.
8. Sital Dev Prasad Singh Son of Luxman Lal Singh Resident of Village- Chak, P.S. Jalalgarh, District- Purnea.
9. Parul Sharma Wife of Mahesh Sharma
10. Rakesh Sharma Son of Mahesh Sharma
11. Sadanand Mahto Son of late Gunanand Mahto
12. Ramlal Mahto Son of late Gunanand Mahto Resident of Village- Sautha, P.S. Jalalgarh, District- Purnea.

... .. Respondent/s

Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 992 of 2018)

For the Petitioner/s : Mr.Bijendra Kumar Singh

For the Respondent/s : Mr.Ajit Ranjan Kumar

(In CIVIL MISCELLANEOUS JURISDICTION No. 1397 of 2018)

For the Petitioner/s : Mr.Bijendra Kumar Singh

For the Respondent/s : Mr.Ajit Ranjan Kumar

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

10 20-02-2023

Heard learned counsel for the parties.

This Civil Miscellaneous Application has been filed for setting aside the order dated 09.02.2018 passed by learned Sub Judge- Ist, Purnea in Title Suit No. 91 of 2016 whereby he has pleased to reject the application dated 31.08.2017 filed by the petitioners to recall the order dated 10.07.2017 and to accept



the subsequent written statement filed on their behalf.

The brief facts of the case are that respondent Nos. 1 and 2 are plaintiffs who have filed T. S. No. 91 of 2016 for partition of 4.27 acres of land described in 'Schedule A' of the plaint between petitioners and respondent Nos. 3, 4, 5 and 6. The defendants have filed W.S. on 28.10.2017 stating therein that they are purchasers of land from defendant No. 3 / respondent No. 5 Mahesh Sharma. It is stated that all the co-sharers of deceased ancestor Sohanlal Mishtri got amicably partitioned in joint family property and according to convenience and necessity they have sold their respective shares to meet the necessity of the family.

Petitioners (defendant Nos. 10, 11 and 7) who are bona fide purchasers of part of the suit land in question appeared on 17.03.2017 but W.S. has been filed belatedly on 31.08.2017 with a petition for condonation of delay and to accept the W.S. but the same has been rejected by the trial Court vide the impugned order.

Learned counsel for the petitioners submits that petitioners are the bona fide purchasers of the part of suit land and the natural justice demands the extension of the period of 90 days so that case may be adjudicated on merit and irreparable



loss and great prejudice would be caused if petition of the petitioners is not accepted. The defendants / petitioners have not knowingly delayed in filing the written statement. The petitioners could not file the written statement within the prescribed period due to lack of some essential documents regarding the suit land.

Learned counsel for the respondents opposed the application and submits that the petitioners have without any sufficient reason, delayed in filing the written statement and the trial Court has rightly rejected the condonation of delay petition and rejected the recall petition debarring the petitioners for filing written statement. However, he has conceded that the Court has power to extend the time period. Lastly, it is submitted that the learned trial Court may be directed to expedite the disposal of the suit.

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.

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.

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.

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.

In view of the facts and circumstances of the case and submission on behalf of the parties and the law discussed above and in the interest of justice, this Civil Miscellaneous Application is allowed. The impugned orders dated 09.02.2018 and 10.07.2017 passed by learned Sub Judge – Ist, Purnea in Title Suit No. 91 / 2016 are set aside. It is directed that written statement filed on behalf of petitioners shall be taken on record. The learned Court below is directed to expedite the disposal of the suit. The parties are directed to co-operate in expeditious disposal of this Case

(Sunil Dutta Mishra, J)

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