

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1549 of 2018**

=====

Madan Yadav, Son of Ramdeo Yadav, Resident of Village- Mahuawan, P.S.-
Amas, District- Gaya.

... .. Petitioner/s

Versus

1. Md. Imran Rizwi @ Md. Imran Rizvi, Son of Enamul Haque, Resident of Village- Hamzapur, P.S.- Amas, District- Gaya.
2. Dadan Yadav, Son of Ramdeo Yadav, Resident of Village- Rohi, P.S.- Barachatti, District- Gaya.
3. Rajeshwar Kumar, Son of Sundra Yadav, Resident of Village- Rohi, P.S.- Barachatti, District- Gaya.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sushant Praveer, Advocate
For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

6 13-03-2023 Heard learned counsel for the petitioner.

2. The instant Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India for setting aside the order dated 30.08.2018 passed by the Court of learned Munsif, Sherghatti (Gaya) in Title Suit No. 02 of 2005, whereby and whereunder the learned Court below rejected the petition dated 11.08.2017 filed by the petitioner for recall of the order dated 02.11.2010 and refused to accept the written statement filed on behalf of the petitioner/defendant no. 1 and



fixed the next date for final arguments.

3. Learned counsel for the petitioner submits that the plaintiff filed Title Suit bearing No. 02 of 2005 for declaration of right, title and interest over the suit land. The defendant no. 1/petitioner appeared before the trial Court and filed a petition dated 21.09.2005 with a prayer to abate the proceeding in view of Section 4(c) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1958. However, the same was rejected by the Court in the year 2010 and vide order dated 02.11.2010 debarred the defendant no. 1/petitioner from filing written statement. The petitioner filed a recall petition on 11.08.2017 for recall of the said order dated 02.11.2010 and prayed to allow the petitioner to file written statement which was rejected by the impugned order.

4. Learned counsel for the petitioner submits that the petitioner has right and interest in the suit property and if he is not allowed to file written statement, his right and interest shall be seriously prejudice and shall suffer irreparable loss and injury. Further, he submits that provision of Order 8 Rule 1 of the Code of Civil Procedure, 1908 has been held as directory and not mandatory by the Hon'ble Supreme Court in various judgments and the Court has discretion to extend the time limit



to file written statement. Learned counsel for the petitioner further submits that the petitioner was under medical treatment and he could not save his one eyesight due to which he is suffering from much physical and mental agony. Accordingly, not filing of the written statement by the petitioner was not deliberate but due to the reason of his illness. He has lastly submitted that it is in the interest of justice that the written statement may be permitted to be filed by the petitioner so that his interest may be saved and the Court will be able to adjudicate the case on merit. On these grounds, he prayed to set aside the impugned order.

5. Having heard the learned counsel for the petitioner and perused the material on record including the impugned order, it appears that the petitioner was debarred from filing the written statement vide order dated 02.11.2010 and after a long delay of about 7 years, he has filed the recall petition on 11.08.2017. It also appears that after the completion of evidence on behalf of plaintiff, the suit was fixed for final argument. The petitioner has taken a general defence that he was ill without any details and supporting documents.

6. From perusal of the impugned order, it appears that considering the fact that the case was fixed for final argument



and the petitioner filed the said petition after much delay, the learned Court below rejected the said petition.

7. As per the provisions of Order 8 Rule 1 of the Code, the defendant is obliged to present a written statement of his defence within 30 days from the date of service of summons. Proviso thereto enables the Court to extend the period up to 90 days from the date of service of summons for sufficient reason. Although, it is interpreted by the Hon'ble Supreme Court time and again that the words "shall not be later than 90 days" do not take away power of the Court to accept written statement beyond that time as the nature of the provision is procedural and it is not a part of substantive law. However, the Hon'ble Supreme Court has given mandate that time can be extended only in exceptionally hard cases.

8. The Statement of objects and reasons for enacting the Code of Civil Procedure (Amendment) Act, 2002 with effect from 01.07.2002 behind incorporating Order VIII Rule 1 C.P.C. in the present shape is to curb the mischief on the part of unscrupulous defendants adopting dilatory tactics delaying the disposal of cases.

9. The Hon'ble Supreme Court in **Salem Advocate Bar Association Vs. Union of India** reported in (2005) 6 SCC



344, in paragraph 21 observed that:

“ 21.There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to “make such order in relation to the suit as it thinks fit”. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1.”

10. In **Atcom Technologies Limited Vs. Y.A. Chunawala and Company and Others (2018) 6 SCC 639**, the Hon'ble Supreme Court observed that the provision of Order 8 Rule 1 C.P.C. providing for the upper limit of 90 days to file written statement is directory but the same cannot be made in routine. The time can be extended only in exceptionally hard cases.

11. It is needless to point out that the law will assist only those who are vigilant about their rights and not those who sleep over them. **Lord Denning in Allen Vs. Sir Alfred Mc Alpine** observed that law's delays have been intolerable and last so long as to turn justice sour.



12. Where the facts lead to the conclusion that defendants were not negligent or using dilatory tactics, the delay may be condoned and where there is an attempt on the part of the defendant to thwart the ends of justice by adopting delay gimmicks, the accepting the written statement beyond the fixed time should be denied.

13. This Court cannot permit laxity or gross negligence on the part of the petitioner to be condoned while granting permission to accept the written statement. If the application of the petitioner is allowed, it would amount to giving premium to the petitioner for laxity and gross negligence but also tactics adopted by him to somehow delay the proceeding. Although it is expected that Court decides dispute between the parties by giving opportunity to the contesting party to place their respective versions on merits but the conduct of litigant like petitioner, the Court ought not to show indulgence by adopting a liberal approach.

14. The onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within stipulated time and the petitioner failed to file the written statement within 30 days of the date of service of summon or within extended period of 90



days under proviso and the delay of about of 7 years in filing written statement at the stage of final argument without any valid reason is liable to be not accepted and the learned Court below has rightly passed the impugned order. I do not find any jurisdictional illegality or error for interfering by this Court in its supervisory jurisdiction under Article 227 of the Constitution.

15. For the reasons aforesaid, the Civil Miscellaneous Application is hereby dismissed.

(Sunil Dutta Mishra, J)

ashutosh/-

U			
---	--	--	--

