

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1906 of 2018

1. Md. Gayasuddin, S/o Late Gaffur Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea
2. Shekh Islam, S/o Late Shekh Hanif Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea
3. Md. Hassimuddin, S/o Late Shekh Hanif Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea
4. Md. Mehruddin, S/o Late Shekh Hanif Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea
5. Md. Israfil, S/o Late Shekh Hanif Resident of Village Bairgachhi, PO Kajha, P. S. K.Nagar, District Purnea

... .. Petitioner/s

Versus

1. Most. Girija Devi, W/o Late Mohideo Paswan Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea
2. Hemant Paswan, S/o Late Mohideo Paswan Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea
3. Yaswant Kumar Paswan, S/o Late Mohideo Paswan Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea
4. Bharti Devi, D/o Late Mohideo Paswan Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea
5. Puspa Kumar, D/o Late Mohideo Paswan Resident of Village Bairgachhi, P. O. Kajha, P.S. K.Nagar, District Purnea

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh, Advocate
For the Respondent/s : Mr. Ajit Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 20-03-2023

Heard learned counsel for the parties.

This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 13.09.2018, passed by learned Sub-Judge-I, Purnea in Title Suit No. 165 of 2014 whereby and whereunder the learned



court below rejected the petition dated 20.02.2016 filed by the petitioners for accepting the written statement filed by them after recalling the order dated 18.09.2015 by which petitioners have been debarred from filing written statement.

It appears from the record that the plaintiffs/respondent 1st party filed Title Suit No. 165 of 2014 for declaration that the plaintiffs are *Kaimi Raiyat* of the ancestor suit holdings. The petitioners/ defendants appeared in the suit on 17.04.2015 but written statement on their behalf has not been filed within the prescribed time period accordingly the learned court below debarred the defendants from filing written statement on 18.09.2015. The application for recall of the said order and accepting the written statement filed on their behalf has been rejected by the learned trial court.

Learned counsel for the petitioners submits that petitioners already got their written statement prepared but it was handed over to the Advocate clerk who suddenly fell ill seriously and could not file the written statement of the petitioners, when the defendants came to know the said facts he brought their file from the house of the Advocate clerk and filed the same on 21.01.2016. Further, it is submitted that petitioners have not filed their written statement within statutory period due



to that reason and the delay was not intentional or wilfull and if their written statement is not accepted by recalling the order of debar from filing written statement the petitioners will suffer irreparable loss and injury. He further submits that the suit is at its initial stage and issue in the suit has yet to be framed and trial has not commenced, accordingly, no prejudice would be cause to the plaintiffs. He next submits that petitioners have very good case on merit, it is in the interest of justice that suit may be adjudicated on merit and the provision under Rule 1 of Order VIII CPC is directory and not mandatory in nature as held by the Hon'ble Supreme Court. Hence, he prays to set aside the impugned order, written statement filed on behalf of petitioners may be accepted.

On the other hand, learned counsel for the respondents submits that there is no illegality in the impugned order as the petitioners have not filed the written statement within the scheduled time and they failed to give sufficient reasons for delay in filing their written statement. He next submits the delay in filing of written statement is attributable to the negligence and intentional delay on the part of the petitioners/defendants. Accordingly, prayed for dismissal of this Civil Miscellaneous Application.



Order VIII, Rule 1 of CPC relates to written statement. The object of enacting Order VIII Rule 1 CPC is to stall delaying tactics on the part of defendants and thus to curb the mischief on the part of unscrupulous defendants adopting dilatory tactics delaying the disposal of cases. It is to expedite and reduce delay in disposal of suit.

The Hon'ble Supreme Court in **Salem Advocate Bar Association, T.N. vs. Union of India (2005) 6 SCC 344, Kailash vs. Nankhu AIR 2005 SC 2441 and Atcom Technologies Limited vs. Y.A. Chunawala and Company (2018) 6 SCC 639** held that provision of Order VIII Rule 1 CPC providing the upper time limit to file written statement is directory in nature but the same cannot be made in routine.

In the present case as stated by learned counsel for the parties, the suit is at initial stage and the petitioners are contesting parties and narration of facts to show the reason of delay in filing written statement does not point out towards delaying tactics on the parts of the petitioners or malafide or deliberate negligence. It will be in the interest of justice to both the parties that the written statement filed on behalf of petitioners be accepted with appropriate cost so that the suit may be decided on merit.



Accordingly, the instant Civil Miscellaneous Application stands allowed. The impugned order dated 13.09.2018 passed in Title Suit No. 165 of 2014 by learned Sub-Judge-I, Purnea is set aside and the written statement of petitioners filed in the suit is accepted subject to payment of cost of Rs. 3,000/- payable by the petitioners to plaintiffs within four weeks of receipt/production of this order before the trial court.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.03.2023
Transmission Date	

