

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2127 of 2017**

1. Ganesh Singh @ Ganesh Prasad Singh, S/o Late Ram Narayan Singh, Resident of village and P.O. Neur, P.S. Andhramath, District - Madhubani.
2. Jagannath Singh, S/o Late Bhairav Singh
3. Shiveshwar Singh @ Shiv Prasad Singh, S/o Late Ganga Prasad Singh, All residents of Village and PO- Neur, P.S. Andhramath, District- Madhubani.

... .. Petitioner/s

Versus

- 1.1. Satish Kumar Patel, Son of Late Ram Adhin Roy, Resident of village and P.O. Neur, P.S. Andhramath, District - Madhubani.
- 1.2. Pinku Roy, Son of Late Ram Adhin Roy, Resident of village and P.O. Neur, P.S. Andhramath, District - Madhubani.
2. Raj Kumar Roy, S/o Ram Adhin Roy, both residents of Village and P.O.- Neur, P.S. Andhramath, District- Madhubani.
3. Alok Kumar Singh
4. Amit Singh, both Sons of Ganesh Singh
5. Lalit Singh, S/o Jagannath Singh
6. Niranjana Singh
7. Prem Kumar Singh, both S/o Shiv Prasad Singh @ Shiveshwar Singh, all residents of Village and P.O.- Neur, P.S. Andhramath, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanat Kumar Mishra, Advocate
For the Respondent/s : Mr. Dhaneshwar Vashist, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 23-01-2024

Heard learned counsel for the petitioners as well as learned counsel for respondent 2nd set on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant application has been filed by the petitioners for setting aside the order dated 11.09.2017 passed by the learned Sub-Judge-I, Jhunjharpur in Title Suit No. 51 of 2014



whereby and whereunder written statement filed by defendants/petitioners had been rejected with further prayer for issuance of directions to the learned trial court to accept the written statement filed by the defendants/petitioners.

3. Learned counsel for the petitioners submits that the petitioners are defendant nos. 1, 4 and 6 and defendant no.1 appeared in this case on 15.11.2014 and defendant nos. 4 and 6 appeared on 22.11.2016. However, their written statement were not accepted by the learned trial court. Learned trial court while rejecting the written statement of the petitioner no.1/defendant no.1, observed that there was no application for condonation of delay in filing the written statement. On the other hand, written statement filed on behalf of defendant nos. 4 and 6 was also rejected on the ground that it was filed after 11 months. Learned counsel for the petitioners further submits that the petitioner no.1/defendant no.1 gave a time petition for filing the written statement as the defendant no.1 was not having all the documents for filing the written statement. Further, the written statement was filed on the next date of hearing i.e., on 06.01.2015 on behalf of defendant no.1. So there was no delay in filing the written statement by defendant no.1. Thereafter, defendant nos. 4 and 6 also filed the written statement within time as their written statement was filed just immediately after their appearance in the



case.

4. Learned counsel further submits that at the time of appearance of defendant nos. 1, 4 and 6, the matter was still at the stage of service report on the defendants. For this reason, there was no need to file any application for condoning the delay and accepting the written statement. Moreover, defendant nos. 1, 4 and 6 were never debarred from filing the written statement. Learned counsel further submits that the impugned order has been passed mechanically as it has also not taken into consideration that the plaintiff did not make any objection against acceptance of the written statement of defendant no.1/petitioner no.1 and prayed for cost for accepting the written statement filed by defendant nos. 2 and 3.

5. Despite service of notice, there is no representation from respondent 1st set though learned counsel for respondent 2nd set is present who supports the case of the petitioners.

6. Having regard to the submissions and perusal of material available on record, I find that the learned trial court rejected the written statement filed on behalf of defendant nos. 1, 4 and 6 on technical grounds. The purpose of filing the written statement is to give an opportunity to the defendants to put up their case before the trial court so as to enable it to arrive at just and proper conclusion after appreciating the facts of the case and make



endeavor to adjudicate the real controversy between the parties. If the learned trial court has held that the written statement was filed after much delay, it could have compensated the plaintiff by imposition of cost. So I am of the view that the exercise of jurisdiction by the learned trial court was not proper and, hence, the impugned order is not sustainable.

7. Accordingly, the order dated 11.09.2017 passed by the learned Sub-Judge-I, Jhanjharpur in Title Suit No. 51 of 2014 is set aside subject to payment of cost of Rs. 3,000/- by each of the petitioners to the plaintiff. The aforesaid cost shall be paid within three months from the date of receipt/production of a copy of this order. Consequently, the learned trial court is directed to accept the written statement filed on behalf of the defendant nos. 1, 4 and 6/petitioner nos. 1, 2 and 3, respectively. Since it is an old matter, the learned trial court is directed to conclude the trial within a year from the date of receipt/production of a copy of this order.

8. The instant petition stands allowed in terms of aforesaid order.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.01.2024
Transmission Date	NA

