

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1319 of 2017

Nalini Lall, w/o Late Prakash Chandra Lal, R/o Mohalla Purnea City, P.S. Purnea Sadar, District- Purnea lastly r/o C 62 Anand Niketan, P.S. Sector 12, R.K. Puram, New Delhi, currently r/o c/o Vikash Chand Lall 544 Q Marielli Road, Apartment, 207, Rockville, Maryland, the USA, through her power of attorney holder Ram Chandra Yadav S/o Shri Thakkan Yadav, r/o Village Dhattatol P.S. Rudrapur District Darbhanga presently r/o Khuskibag Station

... .. Petitioner/s

Versus

1. Nilima Kumari , w/o Shri Ghanshyam Choudhary
2. Ghanshyam Choudhary s/o Late Chunnilal Choudhary Both r/o Purnia City, P.S. Sadar, District Purnia.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Patanjali Rishi , Advocate
For the Respondent/s : None.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 29-04-2024

Heard learned counsel for the petitioner. However, none is present on behalf of the respondents, though notices upon the respondents were validly served way back in the year 2018. Thereafter, on 25.01.2024, an opportunity was also given to the respondents to join the proceeding.

2. The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 17.04.2017 passed in Title Suit No. 148 of 2012 by the learned Sub Judge-I, Purnia whereby and whereunder the learned Sub Judge rejected the petition of the petitioner seeking recall of the



order dated 25.11.2016 (wrongly mentioned as the order dated 21.12.2016) whereby the petitioner was debarred from filing written statement and further prayer of the petitioner is for setting aside the order dated 25.11.2016 passed by the learned Sub Judge-1, Purnia in Title Suit No. 148 of 2012.

3. The learned counsel for the petitioner submits that the respondents are plaintiffs before the learned trial court and have filed Title Suit No. 148 of 2012 claiming specific performance of agreement for sale of land, the details of which have been mentioned in the plaint. The respondents submitted that even after entering into an agreement for sale for the suit land and receiving consideration money within the stipulated period of six months, the petitioner as well as her husband (now deceased) did not execute the sale deed. Upon receiving notice, the petitioner herein, who had been residing at Kolkata and was in process of shifting to New Delhi, contacted a lawyer at Purnia and engaged him to conduct her case and lawyer entered appearance on 29.02.2016 on behalf of the petitioner. However, the petitioner suffered renal failure and was put on dialysis and during that period she was physically not able to commute and for this reason, she could not collect and supply all the relevant documents to her lawyer. Finding problems in communication with the lawyer, the petitioner withdrew her case from her lawyer whom she had engaged and she



engaged another lawyer for conducting her case, who appeared on behalf of the petitioner on 25.11.2016. On that date, time petition was filed on behalf of the petitioner, however, it transpires that prior to filing of the time petition, the learned trial court had debarred the petitioner from filing written statement vide order dated 25.11.2016. Subsequently, the petitioner filed a petition on 10.01.2017 for recall of the order dated 25.11.2016 and she also filed her written statement. A rejoinder to this petition was filed by the respondents. The learned counsel further submits that the learned trial court, without considering the genuine difficulty on part of the petitioner in not filing her written statement within time, vide order dated 17.04.2017, rejected the petition of the petitioner for recall of the order dated 25.11.2016, though wrongly mentioned in the petition as 21.12.2016. The learned counsel further submits that non-filing of the written statement by the petitioner was a bonafide mistake and reasons furnished by the petitioner deserved to be accepted. The learned counsel further submits that in view of aforesaid facts and circumstances of the case, the petition of the petitioner ought to have been allowed and for this reason, the impugned order is bad in eyes of law.

4. Perused the record.

5. It is the basic tenet of the civil law that a person should get an opportunity to contest the suit against him/her.



However, the learned trial court taking note of time petitions filed on behalf of the defendants on different dates and for the reason that the written statement was filed after 10 months of appearance, refused to entertain the same and rejected the prayer for taking written statement on record. Subsequent petition for recall was also rejected which has also been challenged before this Court.

6. However, without going into merits of the case, in order to enable the petitioner to contest the suit, the orders dated 25.11.2016 and 17.04.2017 are set aside subject to payment of cost of Rs. 10,000/-(ten thousand) to be paid by the petitioner to the contesting respondent on the first date before the learned trial court after passing of this judgment.

7. Consequently, the learned trial court is directed to accept the written statement filed by the petitioner and proceed to dispose of the matter within one year from the date of receipt/production of a copy of this judgment.

8. In the result, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2024
Transmission Date	NA

