

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.966 of 2017

Ram Subhag Yadav Son of Late Ram Autar Yadav, resident of Village Bhagjoya, P.S. Paliganj, District- Patna.

... .. Petitioner/s

Versus

- 1.1. Nirmal Kumar, Son of late Ram Nagina Tiwari, Resident of Village-Milki, P.S. Paliganj, District- Patna.
- 2.1. Arun Kumari Tiwari, Son of late Sita Ram Tiwari, Resident of Village-Milki, P.S. Paliganj, District- Patna.
- 2.2. Anil Kumar Tiwari, Son of late Sita Ram Tiwari, Resident of Village-Milki, P.S. Paliganj, District- Patna.
- 2.3. Nirbhay Kumar Tiwari, Son of late Sita Ram Tiwari, Resident of Village-Milki, P.S. Paliganj, District- Patna.
3. Smt. Radhika Devi, Wife of Late Awadh Bihari Tiwari,
4. Anandi Tiwari, son of Awadh Bihari Tiwari.
5. Pawan Tiwari, son of Awadh Bihari Tiwari.
6. Rajani Devi, Wife of Anjani Tiwary,
7. Raushan Tiwari,
8. Shivan Tiwari,
9. Aashish Tiwari, 7 to 9 are Sons of Anjani Tiwari, All are resident of Village Milki P.S. Paliganj, District- Patna.
10. Sabitri Devi, Wife of Rishideo Tiwari.
11. Birendra Tiwari,
12. Jitendra Tiwari,
13. Raj Kishor Tiwari, 11 to 13 are Sons of Rishideo Tiwari.
14. Chandrama Tiwari.
15. Sudarshan Tiwari, 14 & 15 are Sons of Ram Kishun Tiwari.
16. Narmadeshwar Tiwari, Son of Late Pyare Tiwari, 10 to 16 are resident of Village Milki P.S. Paliganj, District- Patna.
17. Sri Kant Yadav,
18. Sita Ram Yadav, Both Sons of Late Madho Yadav.
19. Chandeshwari Devi, Daughter of Late Madho Yadav.
20. Jitendra Yadav, Son of late Bhagwan Yadav.
21. Ram Prasad Yadav, son of late Jadhu Yadav.
22. Most. Jhunia Devi, Wife of Late Ram Deep Yadav.
23. Dildar Yadav,
24. Sonu Yadav.
25. Chhotu Yadav, 23 to 25 are sons of late Ramdeep Yadav.



26. Sahja Yadav, Son of Late Jagdish Yadav.
27. Manoj Yadav, Son of Late Sakaldip Yadav.
28. Ram Das Yadav, Son of Late Baleshwar Yadav.
29. Ram Prawesh Yadav.
30. Ram Ishwar Yadav,
31. Ram Lakhan Yadav, 29 to 31 are sons of Late Radhey Yadav.
32. Most. Meena Devi, Wife of Ram Raj Yadav.
33. Bittu Kumar Yadav @ Vishal Kumar Yadav, Son of Ram Raj Yadav.
34. Pummi Kumari, Daughter of Ram Raj Yadav,
35. Binod Kumar,
36. Bineshwar Yadav.
37. Awadhesh Yadav, 35 to 37 are Sons of Late Shivismohan Yadav.
38. Chinta Devi, Wife of Late Ramjee Yadav.
39. Bhism Yadav,
40. Akhilesh Yadav, Both sons of Late Ramjee Yadav.
41. Krishna Yadav, Son of Late Jag Mohan Yadav.
42. Teja Yadav, Son of Suryanath Yadav.
43. Tunnu Yadav.
44. Sachida Yadav.
45. Jitendra Yadav, 43 to 45 are sons of Late Ram Babu Yadav, 17 to 45 are residents of village Bhagjoya, P.S. Paliganj, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Devi Das Srivastava, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 06-02-2025

Present learned counsel for the petitioner.

2. Despite service of notice, none appeared for the respondents.

3. The present petition has been filed for quashing the order dated 17.02.2017 passed in Title Suit No. 201 of 2001 by



the learned Sub Judge, Paliganj whereby and whereunder the petition dated 03.01.2017 filed by the defendant no. 14/petitioner for condoning the delay and accepting his written statement has been rejected.

4. Learned counsel for the petitioner submits that the plaintiff/ respondents 1st set have filed the suit for partition and after summons the defendant no. 14/petitioner appeared in the suit on 06.06.2002. Though a number of opportunities were given to the petitioner for filing his written statement, the same could not be filed within the time granted for the said purpose. As the learned counsel did not properly advise the petitioner for filing the written statement within time, the petitioner was debarred from filing his written statement. Learned counsel further submits that moreover, the learned counsel for the petitioner before the learned trial court left the *pairvi* which was not in the knowledge of the petitioner and for this reason also, the written statement could not be filed. Learned counsel further submits that certain documents were also not available with the petitioner after obtaining those documents, the petitioner approached the Court for filing written statement and filed his written statement along with the limitation petition on 03.01.2017 but the learned trial court refused to accept the



written statement and rejected the petition filed by the petitioner. The learned counsel reiterates that the petitioner had already appeared in the suit and has been contesting the case but he had no knowledge about leaving of *pairvi* by his counsel and his counsel never informed the petitioner for filing the written statement. Further due to lack of relevant documents in support of case, written statement could not be filed within the time granted by the learned trial court. Learned counsel refers to the decision of Hon'ble Supreme Court in the case of ***M/s R.N. Jadi & Brother & Ors. Vs. Subhashchandra*** reported in ***2007(4) PLJR 106(SC)*** and submits that the filing of written statement is part of procedural law and the procedures are to be adopted in order to further the cause of justice. No party should ordinarily be denied participation in the process of justice dispensation unless compelled by specific provisions of the statute. Learned counsel further submits that in the same suit, the defendant nos. 11, 11(A) and 11(B) also filed a petition on 16.02.2016 for acceptance of their written statement which was allowed by the learned trial court vide order dated 14.11.2016 and 23.11.2016 respectively, and their written statement was accepted. Learned counsel further submits that there was no deliberate delay or laches on the part of the petitioner in filing the written



statement rather the same has been filed after obtaining the entire relevant documents and the learned trial court should have accepted the same for the ends of justice. Hence, the impugned order is not sustainable and same needs interference by this Court.

5. Having regard to the submission made on behalf of the petitioner and on perusal of the record, I do not find much merit in the submission of the learned counsel for the petitioner. It is evident from the impugned order that the petitioner appeared before the learned trial court on 06.06.2002 and sought time for filing the written statement. Thereafter, a number of opportunities were given to him but he did not file the written statement. Ultimately, on 21.04.2007 a fine of Rs.100 was imposed but even then the petitioner neither filed the written statement nor paid the fine. The evidence of the plaintiff has been completed and thereafter, the petitioner appeared after 15 years and filed the petition for taking his written statement on record. There is gross negligence and willful disobedience of the orders of the learned trial court by the petitioner. Even the grounds taken by the petitioner do not appear to be sustainable to this Court. The petitioner has been taking the ground that firstly, the written statement could not be filed due to laches on



part of the learned counsel who represented the petitioner before the learned trial court. But no complaint has been made against the counsel and no such fact or report has been brought on record. Then in the same petition the petitioner claims that the written statement could not be filed for want of requisite documents. Both could not be true. So it is much clear that the petitioner wants to take advantage of his own wrong which could not be allowed. The authority cited by the petitioner in the case of *M/s R.N. Jadi & Brother* (supra) could not be of help to the cause of the petitioner since the facts are not similar.

6. Hence, I do not find any infirmity in the impugned order dated 17.02.2017 and hence, the same is affirmed.

7. For the aforesaid reasons, I do not find any merit in the present petition. Accordingly, the present petition is dismissed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.02.2025
Transmission Date	N/A

