

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2143 of 2017**

1. Braj Lal Mahto @ Singh @ Braj Lal Singh
2. Ram Ashish Mahto @ Ram Ashish Singh @ Mahto,
3. Debendra Mahto @ Debendra Prasad Singh @ Mahto, All sons of Late Kujal Mahto,
4. Masomat Jakhani Devi, Wife of Late Kujai Mahto,
5. Pratima Devi, Daughter of Late Kujai Mahto, All resident of Village-Gehuma Bairiya, Tola Ghuskipatti, P.S.- Phulparas, District- Madhubani.
6. Thakai Mahto,
7. Singheshwar Mahto, Both sons of Late Sagam Mahto,
8. Khakhari Devi, Daughter of Late Sagam Mahto, All residents of Village-Gehuma Bairiya, Tola- Ghuskipatti, P.S.- Phulparas, District- Madhubani.

... .. Petitioners

Versus

Satya Narayan Mahto Son of Late Ram Prasad Mahto, resident of Village-Gehuma Bairiya, Tola- Ghuskipatti, P.S.- Phulparas, District- Madhubani.

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr. Uday Bhanu Rai, Adv. Mr. Baleshwar Kamat, Adv. Mr. Arun Kumar Jha, Adv.
For the Respondent/s	:	Mr.

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

Date : 23-01-2025

Heard learned counsel for the petitioners.

02. Perusal of record shows though plaintiff/respondent received the notice, he has not appeared in the present case.

03. The present petition has been filed by the petitioners under Article 227 of the Constitution of India for quashing the order dated 06.10.2017 passed by the learned Sub



Judge-I, Jhanjharpur in Title Suit No. 191 of 2015, whereby and whereunder the learned trial court rejected the written statement dated 01.09.2017 filed on behalf of the defendants/petitioners.

04. Learned counsel for the petitioner submits that in Title Suit No. 191 of 2015 nothing has happened since the rejection of the written statement of the petitioners. Learned counsel further submits that the petitioners appeared before the learned trial court on 07.06.2017 and thereafter on 20.07.2017 and filed the written statement on 01.09.2017. Learned counsel further submits that when the matter was fixed for 24.08.2017, next date in the case was fixed for 06.09.2017 for filing the written statement. Meanwhile, on 01.09.2017, the written statement was filed on behalf of the defendants but the same was not taken on record on the ground that only 30 days time was available to the defendants for filing written statement. Learned counsel further submits that the provisions of the Code of Civil Procedure, 1908 in this regard is not mandatory and the learned trial court ought to have taken into consideration this fact. Learned counsel further submits that the endeavour of the trial court should be to decide the case on merits and rejection of the written statement would result in miscarriage of justice. The learned trial court has taken a technical approach and rejected



the written statement of defendants by the impugned order and the said order could not be sustained.

05. I have given my thoughtful consideration to the submission made on behalf of the petitioners and perused the record.

06. Perusal of record shows the written statement of the petitioners was rejected on the ground that it was filed after lapse of statutory period of 30 days without any application for condonation of delay and without furnishing any explanation for not filing the written statement within stipulated time. The petitioners have not explained these facts even in the present petition. However, the procedural law is the handmaid of justice and it should help foster the cause of justice and not be an impedance in its way that prevents fair hearings and endeavour of the court should be towards adjudication of any issue on merits.

07. In the aforesaid facts and circumstances, without further going into the details of the case and in order to allow the petitioners to contest the case on merits, the impugned order dated 06.10.2017 passed by the learned Sub Judge-I, Jhanjharpur in Title Suit No. 191 of 2015 is set aside and the learned trial court is directed to take on record the written



statement filed by the petitioners subject to payment of cost of Rs.10,000/- (ten thousands) to the plaintiff/respondent on the first date of hearing after receipt/production of a copy of this order. However, it is made clear that this order is being passed on the basis of submission made on behalf of the petitioner that the matter before the learned trial court has not proceeded any further and is at the same stage when the impugned order was challenged in the instant civil miscellaneous petition. This order would loose effect if the stage of the matter before the learned trial court is not the same as submitted by the learned counsel for the petitioner.

08. In terms of aforesaid direction, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.01.2025
Transmission Date	NA

