

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1750 of 2017

1. Kedar Nath Bhagat @ Kedar Bhagat
2. Ram Nath Bhagat,
3. Kamal Nath Bhagat, All sons of Late Hiranman Bhagat, All residents of Village- Pokharia, P.S.- Sadar, District- Purnea.
4. Radha Muni Devi, Wife of Sri Rajendra Bhagat, Daughter of Late Hiranman Bhagat, Resident of Village- Mahadeopur, P.S.- Pranpur, District- Katihar.

... .. Petitioner/s

Versus

1. Hare Ram Prasad Bhagat Son of Late Jai Kishun Bhagat,
2. Sri Ram Bhagat, Son of Late Jai Kishun Bhagat, Both residents of Village- Nikhrail, P.S.- Sadar, District- Purnea, at present resident of Mohalla- Main Bazar Road, Near Mahabir Sthan Araria, Ward No.28, P.O.P.S.District- Araria.
3. Smt. Satya Bhama Devi, Daughter of Late Jai Kishun Bhagat and Wife of Late Jagdish Prasad Bhagat, Resident of Jokihat, P.O.P.S.- Jokihat, District- Araria.
4. Smt. Ram Dulari Devi, Daughter of Late Jai Kishun Bhagat and Wife of Late Baidya Nath Bhagat, Resident of Main Bazar, Nar Mahabir Sthan Araria, P.O.P.S.District- Araria.
5. Smt. Sita Devi, D/o Late Jai Kishun Bhagat, Wife of Deo Narayan Bhagat, Resident of Main Bazar Road, Araria, Ward No.23, P.O.P.S.District- Araria.
6. Chhedi Lal Bhagat, Son of Late Fakir Chand Bhagat,
7. Dhruv Lal Bhagat, Son of Late Fakir Chand Bhagat,
8. Manoj Kumar Bhagat, Son of Late Fakir Chand Bhagat, All resident of Mohalla- Begambad, Pokharia, P.O.- Pokharia, Via- Gulabbagh, P.S.- Sadar, District- Purnea.
9. Smt. Munni Devi, Daughter of Late Fakir Chand Bhagat, wife of Manoj Kumar Bhagat, Resident of Village- Chikni, P.O.P.S.- Sarsi, District- Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s :	Mr. Vijay Anand, Advocate
For Respondent nos. 2 to 4:	Mr. Gopal Kumar Jha, Advocate
For Respondent nos. 6 to 9:	Md. Nurul Hoda, Advocate
	Mr. Shakil Ahmad Khan, Advocate



For Respondent nos. 1 to 5: Mr. Surendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 13-02-2025

Heard learned counsel for the petitioners as well as learned counsel for the respondents at the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The petitioners have approached this Court against the order dated 12.06.2017 passed by the learned Sub Judge-I, Purnea in Title Suit No. 402 of 2014 whereby and whereunder the petition of the petitioners for taking their written statement on record has been rejected and their application dated 16.01.2017 for recalling the order by which they have been debarred from filing written statement was refused.

3. Learned counsel for the petitioners submits that petitioner no.4 who is defendant no.4 before the court below is a *pardanasin* lady and she is illiterate and was not aware about the proceedings before the learned trial court and for this reason she could not file the written statement within stipulated time. Similarly, other petitioners also could not file their written statements for a number of reasons including the fact that the defendants are illiterate, rustic and poor persons. Earlier they were not having any knowledge about the institution of the suit.



Vide orders dated 16.08.2016 and 05.12.2016, the learned Sub Judge debarred the petitioners from filing written statement. The present suit is a suit for partition and the parties are agnates to each other. The learned trial court did not consider the provisions of Order 8 Rule 1 of the Code of Civil Procedure (for short 'the Code') in true perspective and the legislature by enacting this provision intended to curb the mischief of unscrupulous litigants adopting dilatory tactics. But being part of the procedural law, the same is only directory and not mandatory. The court should have considered that the defendants ought to have given an opportunity to contest the suit on merits and not much time has elapsed so the rejection of their written statement and debarring the petitioners from filing their written statement was not correct. For ends of justice, the defendants/petitioners should be allowed to place their defence on record and contest the suit. Hence, the impugned order be set aside and the written statement of the petitioners be taken on record.

4. Learned counsel referred to the decision of this Court in the case of ***Md. Gosh vs. Bibi Samina Khatoon & Ors.*** (***CWJC No. 14081 of 2012***) and also the decision of Hon'ble Supreme Court in the case of ***Sandeep Thapar Vs. SME***



Technologies Private Limited, reported in **2014 (2) PLJR 284**

SC wherein it has been held as under:-

“The power of Court to extend time for filing written statement beyond time schedule prescribed by Rule 1 is not taken away completely. Extension of time is permissible not in a routine manner but only if it was needed to be given in exceptional cases so as to prevent grave injustice and the Hon’ble Supreme Court further held that in appropriate cases to compensate the other side cost may be awarded and in that the Hon’ble Supreme Court awarded Rs.50,000/-cost for filing written statement. However, in the present case the written statement has already been filed by the present petitioner. The court below has, therefore, wrongly not exercised a jurisdiction vested in it by law and did not consider that if the defendant no.5-petitioner is not allowed to contest the suit, it will prejudice the petitioner and also it will be injustice to the petitioner.”

5. Learned counsel further submits that while allowing the case of ***Md. Gosh*** (supra), the learned Single Judge of this Court allowed the petition setting aside the impugned order debarring the petitioner to file written statement subject to payment of cost.

6. Learned counsel appearing on behalf of the respondent 1st set vehemently contends that there is no merit in the present petition. Learned counsel further submits that the defendants were given a number of opportunities to file the written statement still they did not do so. Defendants/petitioners



appeared before the court on 01.04.2016 and 18.06.2016, respectively but did not file the written statement even after lapse of six months. They were given a number of opportunities for the said purpose. Learned counsel further submits that there is no reason and sufficient cause for not filing the written statement by the petitioners. So there is no infirmity in the impugned order.

7. Perusal of record shows the proceeding in Title Suit No. 402 of 2014 has been stayed vide order dated 04.04.2018 by a Co-ordinate Bench of this Court. Thereafter, the matter has been taken up after appearance of the learned counsel for the respondents who has been heard on the point of admission. Without going into the merits or details of the claim of the parties, considering the fact that the matter remained stayed for all these years and the endeavour of the Court should be towards disposal of the cases on merits and every person should get a fair opportunity of hearing, the impugned orders dated 16.08.2016, 05.12.2016 and 12.06.2017 are set aside and the written statement filed by the petitioners is permitted to be taken on record subject to payment of cost of Rs. 10,000/- to the plaintiffs on the first date of hearing before the learned trial court.



8. With the aforesaid direction, the present petition
stands allowed.

(Arun Kumar Jha, J)

balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.02.2025
Transmission Date	NA

