

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.739 of 2023

1. Sri Suresh Prasad Singh Son of Late Raghunath Mandal @ Raghu Prasad Singh, Resident of Village- Kankaithi, Post Office- Simariya, Police Station- Jagdishpur, District- Bhagalpur.
2. Sri Naresh Prasad Singh Son of Late Raghunath Mandal @ Raghu Prasad Singh, Resident of Village- Kankaithi, Post Office- Simariya, Police Station- Jagdishpur, District- Bhagalpur.
3. Sri Sumendra Prasad Singh Son of Late Raghunath Mandal @ Raghu Prasad Singh, Resident of Village- Kankaithi, Post Office- Simariya, Police Station- Jagdishpur, District- Bhagalpur.
4. Sri Yogendra Prasad Singh Son of Late Raghunath Mandal @ Raghu Prasad Singh, Resident of Village- Kankaithi, Post Office- Simariya, Police Station- Jagdishpur, District- Bhagalpur.
5. Sri Jagdish Prasad Singh Son of Late Bhubneshwar Mandal Resident of Village- Kankaithi, Post Office- Simariya, Police Station- Jagdishpur, District- Bhagalpur.
6. Sri Sachidanand Singh Son of Late Bhubneshwar Mandal Resident of Village- Kankaithi, Post Office- Simariya, Police Station- Jagdishpur, District- Bhagalpur.
7. Sri Ranjit Kumar Son of Late Bhubneshwar Mandal Resident of Village- Kankaithi, Post Office- Simariya, Police Station- Jagdishpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Collector, Bhagalpur.
2. The Anchal Adhikari, Jagdishpur, Bhagalpur.
3. Sri Hari Prasad Bhagat Son of Late Bhagwan Das Bhagat, Resident of Mohalla- Goldar Patti, Tulsi Ram Lane, Police Station- Nathnagar, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Diwakar Yadav, Advocate
For Respondent no. 3 : Mr. Indeshwari Pd. Mandal, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 27-03-2025

Heard learned counsel for the parties.

2. The instant petition has been filed by the petitioners



being aggrieved by the order dated 13.04.2023 passed by learned Sub Judge VIII, Bhagalpur in Title Suit No. 120 of 2019 whereby and whereunder the application dated 05.08.2022 filed under Section 151 of the Code of Civil Procedure (in short “the Code”) on behalf of the defendant/respondent 2nd set was allowed subject to payment of cost of Rs. 2500/- by the plaintiff/petitioner.

3. Learned counsel for the petitioner submits that the defendant/respondent 2nd set appeared in the title suit filed by the plaintiff/petitioner and thereafter vide order dated 08.07.2022, the learned trial court debarred the defendants from filing written statement. Subsequently, on 05.08.2022 the defendants filed an application under Section 151 of the Code seeking to take on record the written statement of the defendant filed on 26.02.2021. But the learned trial court without recalling the order dated 08.07.2022 allowed the application filed by the defendant/respondent 2nd set. The order was passed and the written statement was taken on record after expiry of the period of 90 days prescribed under Order 8 Rule 1 of the Code. The learned trial court further committed an apparent error on face of the record when it directed the plaintiff to deposit Rs.2500 as cost in Nazarat while allowed the application of the



defendant/respondent 2nd set. The cost was imposed upon the defendant/respondent 2nd set for taking on record his written statement which was filed after delay. Thus, learned counsel submits that the impugned order is not sustainable and the same be set aside.

4. On the other hand, learned appearing on behalf of the respondent 2nd set submits that the defendant 2nd set has filed his written statement but it was after expiry of the statutory period of 90 days. This was prior to the order dated 08.07.2022. So it would be deemed that as the defendant 2nd set was not debarred from filing written statement, his written statement was taken on record but the learned trial court proceeded on the reasoning that as the defendant/respondent 2nd set did not seek extension of time, he was statutorily debarred from filing the written statement. For this reason, the defendant was compelled to file an application for taking on record his written statement which was allowed vide the impugned order dated 13.04.2023. There is not much delay in filing written statement and even the Hon'ble Supreme Court in the case of ***Kailash v. Nankhu & Ors.*** reported in ***(2005) 4 SCC 480*** has held that the statutory provision under Order 8 Rule 1 of the Code regarding the time for filing a written statement is directory in nature and is not



mandatory.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. From perusal of the record it appears that after their appearance, the defendant filed on record his written statement though it was after the statutory period of 90 days as provided under Order 8 Rule 1 of the Code which reads as under:

"1. Written statement. __ The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

However, in ***Salem Advocate Bar Association, TamilNadu vs Union Of India*** reported in ***AIR 2005 SC 3353***, the Hon'ble Supreme Court held that the provision is directory and not mandatory. In ***Kailash***(Supra), Hon'ble Supreme Court further held that though the provision is directory, considering the need of expeditious trial of civil cases, the extension of time for filing of written statements shall not be granted as a matter of routine and merely for asking. However, in the present case as the written statement was already filed on record though



belatedly and the defendant did not make prayer for extension of time for taking the same on record exceeding the statutory time limit provided for filing the written statement, the case of defendant is that he filed the written statement just after the lapse of statutory period and was under the impression that he was not debarred from filing the written statement. So there does not appear to be willful disobedience of the statutory provision and deliberate delay on part of the defendant. Further on this ground, the defendant has made out a case in his favour.

6. So far as, the contention of the learned counsel for the petitioners about the learned trial court not recalling the *ex parte* order is concerned, when the impugned order has been passed, the order dated 08.07.2022 stands recalled by implication. Furthermore, perusal of the record shows it has been noted on the margins of the order sheet that *ex parte* order was recalled but it appears the same could not find mention in the order sheet which bears the signature of the learned Presiding Officer. Then directing the plaintiff to deposit Rs.2500 is clearly an error because for the fault of the defendant, the plaintiff could not be penalized and the learned trial court ought to have corrected this mistake as the same was brought to its notice vide the application dated 02.03.2024 filed before it.



7. In the light of the aforesaid discussion, I do not find any excess of jurisdiction of the learned trial court and hence, the order dated 13.04.2023 is affirmed subject to modification that the cost be deposited by the defendant and not by the plaintiff.

8. Accordingly, the present petition stands disposed of.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.04.2025
Transmission Date	N/A

