

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.878 of 2024

Sajan Kumar @ Sajan Yadav S/o Late Musafir Rai, R/o Village- Ilahi Bagh,
P.S.- Phulwaria, Presently at Police Station- Gaurichak, District- Patna.

... .. Petitioner

Versus

Vikas Kumar Verma S/o Late Sunil Kumar, R/o Mohalla- Sanjay Gandhi
Nagar, Road No. 8, Kali Mandir Road, Hanuman Nagar (Kankarbagh), P.O.-
Lohianagar, P.S.- Patrakar Nagar, District- Patna, Present Address- C/o
Dharmendra Singh, Road No. 02, Deep Nagar, P.O.- Gulzarbagh, P.S.-
Mehendiganj, District- Patna.

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr. Pawan Kumar, Advocate
		Mr. Dhaneshwar Vashist, Advocate
For the Respondent/s	:	Mr. Kumar Binode Bariar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 15-04-2025

Heard the learned counsels for the parties.

02. The petitioner is aggrieved by the order dated 19.06.2024 passed the learned Civil Judge (Sr. Division)-IV, Patna City, Patna in Title Suit No. 154 of 2016 whereby and whereunder the petition of the defendant-petitioner filed under Section 5 of the Limitation Act for condoning the delay in filing the written statement has been rejected and the written statement of the defendant was not accepted. The learned trial court further ordered for proceeding under Order-VIII Rule 10 of the Code of Civil Procedure, 1908 (for short 'the Code') against the defendant.

03. Learned counsel for the petitioner submits that



the petitioner is defendant and the respondent has filed the suit for specific performance against the defendant/petitioner. The petitioner appeared in this case through his learned counsel on 05.09.2016 and filed a petition under Order VII r/w Section 21 of the Code raising the question of maintainability on the ground of jurisdiction. The learned trial court heard the parties on the said petition and rejected the same vide its order dated 18.11.2016. Aggrieved by the said order dated 18.11.2016 passed in Title Suit No. 154 of 2016, a review application under Section 114 of the Code has been filed on behalf of the petitioner in the court of learned Sub Judge-III, Patna City, on 06.01.2017. The review application was heard and the learned trial court rejected the prayer for review vide its order dated 07.12.2019. Thereafter, the petitioner appeared in the court on 05.03.2021 with fresh *Vakalatnama* and sought short adjournment for filing written statement. After hearing the parties, the learned trial court adjourned the matter to 15.04.2021 for further proceeding. Learned counsel further submits that before the next appointed date, i.e., on 15.04.2021, the defendant/petitioner filed written statement in Title Suit No. 154 of 2016 on 13.03.2021 through online mode due to Covid-19 lockdown. Subsequently, the hard copy was filed on



12.01.2022. The defendant-petitioner also filed an application under Section 5 of the Limitation Act praying for condonation of delay in filing the written statement. The plaintiff/respondent filed rejoinder to the said application. However, after hearing the parties, the learned trial court, vide order dated 19.06.2024, rejected the petition filed on behalf of the petitioner under Section 5 of the Limitation Act and did not accept the written statement and further directed to proceed under Order VIII Rule 10 of the Code against the petitioner. The said order is under challenge before this Court.

04. Learned counsel for the petitioner further submits that at no point of time, the defendant/petitioner was barred from filing the written statement and the order-sheet shows the matter was adjourned for filing written statement fixing the next date on 15.04.2021. Learned counsel further submits that the written statement could not be filed due to wrong advice of the learned counsel before the learned trial court as an application under Order VII Rule 11 of the Code has been pending before the learned trial court and the petitioner was under impression that unless the said application is disposed of, there was no requirement of filing the written statement. Learned counsel further submits that it was incumbent upon the



then learned counsel for the petitioner to file written statement within the statutory period but he has chosen not to file the same and rather assailed the filing of the suit on the ground of maintainability. Learned counsel refers to the decision of Hon'ble Supreme Court in the case of ***Kailash Vs. Nanhku & Ors.***, reported in ***AIR 2005 SC 2441*** wherein it has been held that the purpose of providing time schedule for filing written statement under Order VIII Rule 1 of the Code is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant and it does not impose an embargo on the power of the court to extend the time. The natural corollary is that no negative inference should be drawn and since it has been held to be directory, the court has power to extend the period of limitation. Learned counsel further refers to the decision in the case of ***Rafiq & Anr. Vs. Munshilal & Anr.***, reported in ***(1981) 2 SCC 788*** wherein the Hon'ble Supreme Court took into consideration the laches on part of the counsel who advises his client and attends the Court on his behalf, living the party confident that the lawyer will look after his interest. The Hon'ble Supreme Court further held that what was the fault of the party who having done everything in his power and expected of him would suffer because of the fault of



his advocate and allowed the restoration of the appeal which was dismissed in default for non-appearance of learned counsel for the appellant before the High Court. Learned counsel next refers to the decision of Hon'ble Supreme Court in the case of ***Kumari Sahu Vs. Bhubanananda Sahu & Ors. (Arising from SLP (Civil) No (S)(C) 24443 of 2024) decided on 31.01.2025,*** wherein the Hon'ble Supreme Court has held that the fact cannot be denied that the ground reality of a considerable proportion of litigants being completely dependent on their counsel remains the same while referring to the decision in the case of ***Rafiq*** (supra) and thus, the Hon'ble Supreme Court allowed the application seeking condonation of delay in filing regular second appeal after delay of 225 days. Learned counsel further refers to the decision of Hon'ble Supreme Court in the case of ***Bharat Kalra Vs. Raj Kishan Chabra {decided on 09.05.2022, Civil Appeal No. 3788 of 2022 (SLP (C) No. 63 of 2022)}*** wherein the Hon'ble Supreme Court relying on the decision in the case of ***Kailash*** (supra) condoned the delay in filing written statement observing that the delay in filing of the written statement could be very well be compensated with costs. Learned counsel further submits that for the reason of wrong advice by the learned counsel, the written statement



could not be filed within time though the defendant-petitioner has all along been before the learned trial court and has attended the Court almost on all the appointed dates. If the defendant/petitioner does not get an opportunity to contest the suit on merits, a grave injustice would be caused to him. Learned counsel further submits that the matter before the learned trial court is still at nascent stage as only one witness has been examined and though the defendant/petitioner was vigilant, due to wrong advice of the learned counsel, written statement could not be filed and hence, the impugned order dated 19.06.2024 is not sustainable and the same be set aside and the written statement of the defendant/petitioner be taken on record.

05. Learned counsel appearing on behalf of the respondent vehemently contends that there is no infirmity in the impugned order. Learned counsel submits that the suit has been filed in the year 2016 and more than eight years have lapsed but the suit could not proceed further due to the delaying tactics of the petitioner in filing frivolous applications. Learned counsel further submits that the petitioner has failed to show the sufficient cause for not filing written statement within the stipulated time period and does not need any leniency from this



Court. Learned counsel further submits that initially the defendant/petitioner tried to delay the trial by filing an application under Order 7 Rule 11 of the Code making an issue of territorial jurisdiction, which was rejected by the learned trial court and thereafter, filed his written statement much beyond the stipulated time period. Learned counsel refers to the decision of this Court in the case of ***Ram Nandan Poddar v. Laxmi Prasad Sah***, reported in ***(2008) 2 PLJR 27*** wherein this Court held that the Court's judicial discretion in accepting the written statement beyond the period of limitation should be exercised with extreme caution under very exceptional and compelling circumstances and as no such exceptional and compelling circumstances having been shown, the Court sustained the order of the learned trial court refusing to allow the filing of written statement after the lapse of stipulated period. Learned counsel further refers to the decision of Hon'ble Supreme Court in the case of ***SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.***, reported in ***(2019) 12 SCC 210*** wherein the Hon'ble Supreme Court has held that filing of written statement could not be subject matter of disposal of an application filed under Order 7 Rule 11 of the Code as it held that liberty to file an application for rejection



under Order 7 Rule 11 of the Code cannot be made as a rule for refusing the last opportunity to file a written statement. Thus, the learned counsel submits that the filing of an application under Order 7 Rule 11 of the Code would not come into the way of filing the written statement and the defendant-petitioner has been deliberately avoiding the filing of written statement and stretch the case before the learned trial court for eight long years though he appeared before the learned trial court in 2016. The defendant-petitioner does not want the court to dispose of the suit before it on merits and has been trying to obstruct the proceeding of the court in the matter. Learned counsel further submits that the excuse that the petitioner was not well advised could not be taken into consideration for condoning the delay in filing the written statement as the defendant-petitioner has not shown any material to show that he has taken any action in this regard. Learned counsel further submits that the excuse being made is a lame one and on this count, the impugned order could not be set aside. Learned counsel also refers to the decision of this Court in the case of ***Smt. Sheela Devi Vs. Smt. Sunita Devi***, reported in ***2013(3) PLJR 868***, wherein the learned Single Judge has held that unless cogent reasons are shown for condoning the delay in accepting the written



statement, extension of time cannot be granted. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same does not need any interference.

06. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

07. The fact which becomes abundantly clear from the record that except for the plea that the defendant/petitioner was not properly advised by the learned counsel before the learned trial court, there appears no other reasons for not filing the written statement within stipulated time period. However, considering the decision of Hon'ble Supreme Court in the case of **Rafiq** (supra), without going into further details of the case, considering the settled law that every person should get a fair opportunity of hearing and also considering the presence of the defendant-petitioner before the learned trial court, the impugned order dated 19.06.2024 passed the learned Civil Judge (Sr. Division)-IV, Patna City, Patna in Title Suit No. 154 of 2016 is set aside and the application of the petitioner for condoning the delay in filing the written statement is allowed subject to payment of cost of Rs. 50,000/- (fifty thousand only) to be paid by the petitioner to the respondents on the first date before the learned trial court after receipt/production of a copy



of this order.

07. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.04.2025
Transmission Date	NA

