

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 6197 of 2017

1. Mosomat Dukho Oraon W/O Late Vasu Oraon
2. Rajendra Oraon S/O Late Vasu Oraon
3. Vinod Oraon S/O Late Vasu Oraon

All residents of village Kaimo, P.O. + P.S. + District Lohardaga.

..... ... Petitioners

Versus

1. Sheikh Khalil Son of Late Sheikh Habibullah
2. Sheikh Jamil Son of Late Sheikh Habibullah
3. Sheikh Samma Son of Late Sheikh Azimullah
4. Sheikh Parvez Son of Late Sheikh Azimullah
5. Sheikh Izaz Son of Late Sheikh Samminullah
6. Sheikh Nisibullah Son of Late Sheikh Faizullah

All residents of village Kaimo, P.O. + P.S. + District Lohardaga. At present residing at Mohalla Nizam Nagar, P.S. Hindpiri, District Lohardaga. Through plaintiff no.1 power of Attorney holder of plaintiff nos.2 to 6.

7. The Deputy Commissioner, Lohardaga

.... Respondents

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioners : Mr. Rajesh Kumar, Advocate

For the Respondents. : None

09/26th June, 2024

1. Learned counsel for the petitioner is present but no one appears on behalf of respondents despite repeated requisites being filed on behalf of the petitioners for service of notice to them.
2. It appears that the respondents are having no interest. Accordingly, the service of notice to them is deemed sufficient.
3. Heard the learned counsel for the petitioners.
4. This writ petition has been preferred against the order dated 18th March, 2017 passed by the learned Civil Judge (Senior Division)-I, Lohardaga in Title Suit No. 03 of 2012, whereby the learned trial court has rejected the application of the defendants (petitioners herein) filed under Order VIII Rule 1 read with Section 151 of the C.P.C., wherein prayer had been made to accept the written statement of the defendant beyond the statutory period of 90 days.

5. The learned counsel for the petitioner has submitted that in the Title Suit No. 03 of 2012 (Sheikh Khalil & Ors. vs. Mosomat Dukho Orain & Ors.) he had appeared on 3rd September, 2012 but could not file the written statement on their behalf and the learned trial court had debarred the defendants to file the written statement vide order dated 5th February, 2013.
6. The defendant nos. 1 to 3, who are petitioners herein also moved the application along with written statement on 7th May, 2013 for extension of time to file the written statement. The prayer for the same was also refused vide order dated 18th March, 2017.
7. The defendants being aggrieved from the order dated 18th March, 2017 has preferred this writ petition.
8. It is evident from the impugned order that the defendants have appeared in the said title suit on 3rd September, 2012. For not filing the written statement, the trial court has closed the opportunity to file the written statement on 5th February, 2013.
9. After expiry of the period of 90 days, the petitioners/defendants moved the application on 7th May, 2013 to accept the written statement and the application which the defendant has moved for extension of the time to file the written statement remained pending. In the meantime, the written statement was also filed on behalf of the defendants on 7th May, 2013 and the same was not accepted by the trial court.
10. In view of the Order VIII Rule 1 read with Section 151 of the C.P.C., the time prescribed for filing the written statement from the date of service of notice is 30 days. Further, 60 days' time may be extended by the trial court to file the written statement for the reasons to be recorded. In the title suit, the defendants failed to file the written statement within a period of 90 days, so his opportunity to file the written statement was closed vide order dated 5th February, 2013. The defendants filed the application to accept the written statement after condoning the delay in filing the same on the ground that on account of

suffering from typhoid, he could not approach to his lawyer and the copy of the same is annexed as Annexure No. 2 of this writ petition. Against the same, the objection was also filed on behalf of the plaintiff and the copy of the same is annexed as Annexure No.3 of this writ petition, in which, it is stated that the written statement was not filed within the stipulated time, so the opportunity for the same was closed. Accordingly, prayed not to extend the time and to accept the written statement on record.

11. From the very objection filed on behalf of the plaintiffs which is Annexure No.3 of this writ petition, it is found that the ground which the defendant has taken for not filing the written statement within time, same has not been controverted on behalf of the plaintiffs. The ground to file the written statement, though belated, condoning the delay is found sufficient.
12. The provisions of Order VIII Rule 1 of C.P.C. to file the written statement within maximum period of 90 days is directory not mandatory.
13. The Hon'ble Apex Court in the case of ***Kailash vs. Nanhku & Ors.*** reported in ***AIR 2005 Supreme Court 2441*** at paragraph 45 (iv) has held that the purpose of the providing the time schedule for filing the written statement under Order VIII Rule 1 of C.P.C. is to expedite and not to scuttle the hearing. The provisions spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the nature of the proviso to Order VIII of C.P.C. is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provisions being in domain of the Procedural Law, it has to be held directory not mandatory. The power of Court to understand time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 of C.P.C. is not completely taken away.

14. In view of the aforesaid discussions as made hereinabove and the judgment rendered by the Hon'ble Apex Court in the case of ***Kailash vs. Nanhku & Ors. (Supra)***, it was incumbent upon the learned trial court to allow the application of the defendants filed under Order VIII, Rule 1 of C.P.C. and to take the written statement on record which was being filed by them. As such the impugned order dated 18th March, 2017 passed by learned Civil Judge (Senior Division)-I, Lohardaga in Title Suit No.03 of 2012 bears infirmity and needs interference.
15. Accordingly, the aforesaid order is set aside and this writ petition is hereby allowed.
16. In consequence, thereof, the application filed by the defendants under Order VIII, Rule 1 of the C.P.C. is, hereby, allowed and the written statement of the defendants is taken on record.
17. Let a copy of this judgment be communicated to the Court concerned through 'FAX'.

Rohit/Rashmi

(Subhash Chand, J.)