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**(2006) 06 JH CK 0047**

**In the Jharkhand High Court**

**Case No : Writ Petition (C) No. 1645 of 2006**

Kamal Kishore Mandal and Others

APPELLANT

Vs

Gangadhar Mandal and Others

RESPONDENT

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**Date of Decision :** 14-06-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1

**Citation :** (2006) 4 JCR 97

**Hon'ble Judges :** Narendra Nath Tiwari, J

**Bench :** Single Bench

**Advocate :** Amar Kumar Sinha, for the Appellant; Rajeev Ranjan Mishra, for the Respondent

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## **Judgement**

Narendra Nath Tiwari, J.—In this writ application the petitioners have prayed for quashing the order dated 10.05.2005 whereby learned Court below has refused to accept the written statement filed by the defendants-petitioners on the ground that the same was filed beyond the period prescribed by the amended provision of the CPC as also for quashing the order dated 23.02.2006 whereby learned Court below has refused to recall the earlier order dated 10.05.2005.

2. It has been stated by the defendants-petitioners that they had appeared on 09.09.2004 and filed a petition on the same day praying for a direction on the plaintiff to supply a legible copy of the plaint. The petition was entertained and the plaintiffs were directed to file a legible and visible copy of the plaint. It has been submitted that the copy of the plaint was supplied on 23.11.2004 and on the petition of the defendants, time was granted for filing written statement. The petitioners, thereafter, filed their written statement on 13.01.2005 within the time fixed by the Court. Subsequently, a petition was filed for acceptance of the written statement filed by the defendants No. 2 to 6. The said petition was contested by the plaintiffs. By the impugned order dated 10.05.2005, learned Court below has refused to accept the written statement on the ground that the same was filed beyond the period prescribed by the amended provision of the

Code of Civil Procedure. The petitioners filed an application for recalling the said order dated 10.05.2005, but the same has been rejected by order dated 23.02.2006.

3. Learned Counsel for the petitioners submitted that though the defendants-petitioners were served with a copy of summons, but the copy of the plaint attached therewith was not legible and as such a petition was filed before the Court below for a direction to supply a legible copy of the plaint which was allowed by the Court below. When the legible copy of the plaint was supplied, the petitioners had prayed for time and time was granted by the Court below for filing written statement. By order dated 22.10.2004, the Court granted time and fixed the case for 13.01.2005 for filing written statement. It has been submitted that the defendants had filed their written statement on 13.01.2005 within the time fixed by the Court below. It has been submitted that when the Court had granted time for the purpose of filing written statement even after the expiry of the period, as prescribed under Rule 1 Order VIII of the Code of Civil Procedure, and the written statement was filed by that time the Court below should not have refused to accept the same on the ground of not filing the written statement within the period prescribed under Order VIII Rule I of the Code of Civil Procedure. Learned Counsel relied on a decision of this Court in *Kishun Gope v. Food Corporation of India* reported in 2005(1) JLJR 321. Learned Counsel submitted that now it is well settled that the provision made under Order VIII Rule 1 of the CPC is directory in nature and not mandatory and the Court in appropriate cases has got power to accept the written statement filed even beyond the time prescribed under Order VIII Rule 1 of the Code of Civil Procedure. Learned Counsel relied on a decision of the Supreme Court in *Kailash Vs. Nanhku and Others*, , and in *Smt. Rani Kusum Vs. Smt. Kanchan Devi and Others*, . Learned Counsel submitted that the Court below failed to appreciate the said legal position and has erroneously refused to accept the written statement filed by the petitioners.

4. Mr. Rajeev Ranjan Mishra, learned Counsel appearing for the respondents, on the other hand, submitted that though the summons were served earlier on the petitioners, they chose to appear belatedly and deliberately filed an application for a direction to supply a legible copy of the plaint though the plaint supplied alongwith summons was clear and legible. Learned Counsel submitted that granting time and fixing 13.01.2005 for filing written statement was contrary to the amended provision of Order VIII Rule 1 of the CPC and under the cover of the said order, the defendant can not derive any benefit against the provision of law. Learned Counsel further submitted that the law relating to filing of written statement has been amended with some object and if the defendants-petitioners are allowed to file written statement belatedly without any limitation, the very object of the amended provision shall be frustrated. Learned Counsel relied on a decision of the Supreme Court in *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*, and submitted that the extension of time cannot be made in a routine manner. The time can be extended only in exceptional cases.

While extending the time, the Court should consider that a time limit has been fixed by way of amendment with some object.

5. After hearing the submissions made by learned Counsel for the parties and considering the materials on record, I find that learned Court below, by its order dated 09.09.2004, had directed the plaintiffs to supply a legible copy of the plaint. The plaintiffs took time over two months in supplying the said legible copy, which was ultimately handed over to the defendants on 23.11.2004. The defendants, thereafter, prayed for time and ultimately by order dated 22.12.2004, learned Court below fixed 13.01.2005 for filing written statement and within that time the written statement was filed on behalf of the defendants No. 2 to 6 on 13.01.2005, i.e., within the time fixed by the Court. It has been held by this Court in *Kishun Gope* (supra) that once the Court grants time for filing written statement even after expiry of the time prescribed by Order VIII Rule 1 of the CPC and the written statement is filed within that time, acceptance of the same cannot be subsequently refused on the ground of belated filing. The law has been settled by the decision of the Supreme Court in *Kailash's* case (supra) wherein it has been held that the amended provision of Order VIII Rule 1 is directory and not mandatory. In view thereof the Court has power to grant further time for filing written statement and if the written statement is filed within the time extended by the Court, acceptance of the same can not be subsequently refused on the ground that the same was filed beyond the time prescribed by Order VIII Rule 1 C.P.C. The decision of the Supreme Court in *Salem Advocate Bar Association v. Union of India* (supra) relied upon by learned Counsel for the respondents also reiterated the same preposition, as has been propounded in the case of *Kailash v. Nanhku* (supra). In this case, the Court below, having taken note that the legible copy of the plaint was not supplied with the summons, directed to supply a legible copy thereof to the defendant and extended the time for filing written statement. The written statement was filed within the time fixed by the Court. The Court below has committed serious error in subsequently rejecting the same. The order dated 10.05.2005 as also the order dated 23.02.2006 are unsustainable and are hereby set aside. The written statement already filed by the defendants-petitioners, dated 13.01.2005, stands accepted on payment of cost of Rs. 1500/- by the defendants to the plaintiffs in the Court below within a period of three weeks from the date of receipt/production of a copy of this order.