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**(2005) 07 PAT CK 0040**  
**In the Patna High Court**  
**Case No : C.R. No. 1389 of 2004**

Vishnu Lal Jhangar and Others

APPELLANT

Vs

Smt. Shanta Chakravarty

RESPONDENT

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**Date of Decision :** 25-07-2005

**Acts Referred:**

**Citation :** (2005) 07 PAT CK 0040

**Final Decision :** Allowed

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## **Judgement**

S.N. Hussain, J.—Petitioners are defendants of Title Suit No. 12 of 2002. which was filed by the plaintiff-opposite party for declaration of her title and restoration of her possession over the suit properties from which she claimed to have been dispossessed on 16-9-2001.

2. The petitioners are aggrieved by order dated 19-8-2004 passed in the aforesaid suit, by which the learned Subordinate Judge-II, Gaya rejected their petitioner for recall of its earlier order dated 2-3-2004 debarring them from filing their written statement and for accepting the written statement filed by them.

3. The short facts of this case are that the suit was filed by the sole opposite party in the year 2002, whereafter notices were issued to the defendants and on 24-6-2002 the summons were said to have been served upon them. The defendants-petitioners appeared in the suit on 7-11-2003 claiming that they learned about the suit just before it and had no earlier knowledge. However, when more than three months passed even after the appearance of the defendants and they did not file their written statement the Court below by its order dated 2-3-2004 debarred them from filing their written statement as per the provision of Order VIII Rule 1 of the CPC (hereinafter referred to as "the Code" for the sake of brevity).

4. However, much thereafter on 26-4-2004 the defendants filed their written statement along with a petition for recall of the said earlier order of the Court below dated 2-3-2004 and for accepting the written statement filed by them. To

this petition the plaintiff filed her rejoinder on 10-6-2004 and also filed its corrigendum on 16-7-2004. Thereafter the learned Court below by its impugned order dated 19-8-2004 rejected the petition of the defendants on the ground that the said written statement was filed much beyond the statutory period of ninety days, relying upon the decision of the Division Bench of the Karnataka High Court in the case of A. Sathyapal v. Smt. Yasmin Banu Ansari reported in AIR 2003 Karnataka 246 and also upon the decision of Jharkhand High Court in the case of Pitambar Singh Manki alias Pitambar Singh v. Makar Singh reported in 2004 (1) JCR 601 : AIR 2004 JhR 568.

5. So far the question of non-appearance of the defendants and non-filing of the written statement, from the date on which summons were claimed to have been served upon the defendants i.e. 24-6-2002 till the date on which they appeared in suit i.e. 7-11-2003, is concerned, it is the specific case of the defendants-petitioners that they had no earlier knowledge of the suit as no summons or notices were served upon them and as soon as they learned about the suit they immediately appeared. This plea of the defendants-petitioners has not been discarded by the learned Court below. Hence the period of ninety days as provided under the amended provision of Order VIII, Rule 1 of the Code will have to be counted from the date of their appearance in the suit i.e. 7-11-2003.

6. It is not in dispute that the defendants appeared in the suit on 7-11-2003 and filed their written statement on 26-4-2004 i.e. about five and a half months thereafter. The plea of the defendants is that they are Pandas of Gaya and their only source of livelihood is their earnings from the pilgrims visiting Gaya for "Sharadh" and "Pind-Dan" and they had to go to Rajasthan and other States in that regard and that in the said circumstances defendant No. 4 was entrusted to look after the case, but due to the pilgrim season he also had to go there to meet the pilgrims and bring them to Gaya, but due to some unforeseen circumstances he was stuck up there and could only reach Gaya on 17-4-2004, whereafter the written statement was prepared and was filed immediately thereafter on 26-4-2004. Hence they claim that there are no intentional laches on their part and they could not file the written statement earlier for reasons beyond their control.

7. This issue has already been set at rest by a decision of their Court dt. 5-4-2005 in the case of Smt. Sunita Devi and Others Vs. Abdhesh Kumar Sinha alias Kamleshwari Pd. Sinha and Others in which it has been held as follows :

22. It is quite apparent that the said amendment of Rule 1 of Order VIII CPC has been brought to cut short delay at various levels. These salutary provisions were introduced for speedy disposal of cases in consonance with fair play and natural justice. Such procedural provisions, even if peremptory in nature, are in essence "in terrorem" so that dilatory litigants might put themselves in order and avoid delay. They cannot, however, completely estop a Court from taking note of events and circumstances, which happened within the prescribed period.

23. Furthermore, the CPC (Amendment) Act, 2002 (Act 22 of 2002) was brought into existence vide Notification No. S.O.604(E) dated 6th June, 2002 and in paragraph 2 of its "Statement of Objects & Reasons" it is specifically mentioned that now this further amendment of the CPC was consistent with demands of fair play and Justice, whereas paragraph 3(c) thereof does not mention that after ninety days the Courts were debarred from accepting the written statement of any defendant.

24. So far the question of fair play and justice is concerned, it has to be kept in mind that the Courts under the Code are Courts of equity and there can be various compelling circumstances and myriad situations in which a defendant can be completely helpless in filing written statement within ninety days from receiving summons including natural catastrophes like floods, earthquakes, devastating storms etc. and also man made calamities such as riots etc. There can even be some very compelling personal reasons such as non-availability of any one during the period of serious ailment of the defendant or in case of serious accident rendering him completely incapable of coming to Court and/or sending any one else to Court.

25. Furthermore, where the cause of justice is at stake the powers of the Court are very wide and cannot be limited and hence when the Court feels that there were genuine and exceptional circumstances and the cause of justice would suffer by refusing the written statement, it definitely can accept the pleading of the defendant beyond the period of ninety days prescribed in Rule 1 of Order VIII of the Code specially when by exercising the said jurisdiction neither the other side is put to any loss nor any delay is caused to the suit.

26. I may hasten to add here that provision of Rule 1 of Order VIII of the Code has to be strictly adhered to as the filing of the written statement within the period prescribed is the rule, whereas accepting the written statement beyond it should be an exception and is left to the Courts judicial discretion, which should be exercised with extreme caution under very exceptional and compelling circumstances only with a view to secure the demands of fair play and justice as per the "Statement of Objects and Reasons" of the Amending Act of 2002.

27. But here by the impugned order the learned Court below has rejected the written statement of the defendants-petitioners only on the ground that it was filed beyond the period of 90 days from the date of receipt of summons as prescribed in Rule 1 of Order VIII of the Code, without even considering the circumstances in which the delay was caused as well as the demand of fair play and justice to subserve the cause of full and final adjudication in accordance with law.

8. Subsequently the Hon"ble Apex Court has also expressed similar views in its order dated 6-4-2005 in the case of Kailash Vs. Nanhku and Others, in which it was held that considering the object and purpose behind the amended provision of Order VIII Rule 1 of the Code it has to be construed as directory and not

mandatory as it is a procedural law meant for expediting the hearing and not for scuttling it. It further held as follows (paras 42 to 44 of AIR) :

43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was found on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the Court. In no case, shall the defendant be permitted to seek extension of time when the Court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The Court may impose costs for dual purpose : (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8, Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8, Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.

9. In the light of the aforesaid decisions of this High Court and also the decision of the Hon''ble Supreme Court there is no occasion for the Courts of this State to rely upon the decisions of other High Courts which are completely contrary to the well established view of the Hon''ble Supreme Court after considering the earlier decisions of the Apex Court including the case of Dr. J.J. Merchant and Others Vs. Shrinath Chaturvedi, and Dr. J.J. Merchant and Others Vs. Shrinath Chaturvedi, Hence the impugned order of the learned Court below being completely in the teeth of the aforesaid decisions, the same is set aside.

10. In the facts and circumstances mentioned above, this Court is satisfied that the reasons assigned by the defendants-petitioners in support of their contention for extension of time for filling the written statement are valid and good and the Court had denied the same only on the wrong assumption that it had no power to do so. The written statement having already been filed in the Court below, it is directed to be taken on record. But the same would be subject to payment of costs of Rs. 4,000/- (rupees four thousand) by the defendants to the plaintiff through his counsel in the Court below within four weeks from today. This revision petition is, accordingly, allowed.