

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1036 of 2018**

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1. Hero Cycle Limited, Registered Office at Hero Nagar, G.T. Road, Ludhiana, Punjab – 141003, through its Managing Director, Shri Pankaj Munjal, Authorized representative Shri Bharat Goel.
 2. Shri Pankaj Munjal, son of Late Om Parkash Munjal, R/o - 26, Model Town, Ludhiana, Punjab- 141003, Authorized representative Shri Bharat Goel.

... .. Petitioner/s

Versus

1. Hero Ecotech Limited, Having office at Phase- VIII, Focal Point, R/o Village- Mangli, Ludhiana, Punjab through its Director Mr. Vijay Munjal.
2. Shri Vijay Munjal, Son of Late Shri Dayanand Munjal, R/o – 19 C, Sarabha Nagar, Ludhiana, Punjab.
3. M/s Kumar Cycle Store, Having office at Annesabad, P.S. Gardnai Bagh, Patna- 800 020, through its Proprietor Mr. Ajay Kumar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Advocate with
Mr. Anjani Kumar Jha, Advocate
Mr. Karan Verma, Advocate
Mr. Shreyash Goyal, Advocate
Mr. Abhay Nath, Advocate
Mr. Ravi Raj, Advocate
Ms. Puja Kumari, Advocate
Ms. Sweta Raj, Advocate
Ms. Shatakshi Sahay, Advocate
For the Respondent/s : Mr. Y.V. Giri, Sr. Advocate along with
Mr. Suraj Samdarshi, Advocate
Mr. Vijay Shanker Tiwari, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 20-06-2023

Heard Mr. Jitendra Kishore Verma, learned counsel appearing for the petitioners and Mr. Y.V. Giri, learned Senior Advocate appearing for the respondents.

2. This Civil Miscellaneous Petition has been filed under Article 227 of the Constitution of India against the Order dated 24.03.2018 passed by learned Additional District Judge- XIII, Patna in Title Suit No. 5031 of 2014 whereby the petition



dated 04.08.2015 of respondents no. 1 and 2 (arrayed as defendants no. 2 and 3 in the Title Suit) for recall of order dated 04.07.2015 has been allowed with cost.

3. The brief facts of the case are that the petitioners/ plaintiffs have filed a Civil Suit being Title Suit No. 5031 of 2014 before the District Court, Patna, seeking *inter alia*, a decree of permanent injunction against the respondent from using and trading of the registered trade mark 'HERO' in relation of bicycle and bicycle parts and also sought mandatory injunction, rendition of accounts and other reliefs against the respondents.

4. The Claim of the petitioners is that summons of the said suit was served on 29.09.2014. Respondent no. 3 appeared on 11.11.2014 before the Trial Court and filed an application seeking extension of time to file his written statement. On 16.12.2014, the respondents no. 1 and 2 appeared and filed applications seeking time to file their written statement and vide order dated 16.12.2014, the learned Trial Court allowed time to file written statement and the matter was fixed for hearing on 23.12.2014 but on that day the Court was on leave and on next fixed date i.e. 06.01.2015, the lawyers were abstaining from work and accordingly the matter was fixed for



further proceeding on 20.01.2015. On 20.01.2015 with the consent of parties, the suit was adjourned to 10.02.2015 and the learned Trial Court directed that in the meantime, the defendants are directed to file their written statement failing which no further time will be allowed.

5. On 10.02.2015, the respondents no. 1 and 2 filed their written statement. The case was adjourned time and again and vide order dated 04.07.2015, the learned Trial Court observed that the defendant appeared on 16.12.2014 and the statutory period for filing written statement has already been expired and no reasonable reply on the point of filing written statement has been given by defendant or no time petition for filing written statement has been filed which shows that they have not to file written statement accordingly they were debarred from filing written statement and the record was fixed for 24.07.2015 for settlement of issue.

6. Thereafter, on 04.08.2015 respondent nos. 1 and 2 filed an application under Section 151 of the Code of Civil Procedure, seeking recall of the said order dated 04.07.2015 which was allowed vide the impugned order dated 24.03.2018 subject to cost of Rs. 5,000/- and it was directed that after depositing the said cost, their written statement may be



accepted. The learned court below observed that defendant no. 2 and 3 filed their written statement on 10.02.2015 but order dated 04.07.2015 shows that the defendants have not filed their written statement and thus the said order was based upon lack of knowledge that defendants had filed their written statement.

7. It appears from the record that by order dated 22.09.2014, the learned Trial Court restrained the defendants from using the trademark name 'HERO' either by itself or in conjunction with any prefix or suffix for bicycles or parts thereof. Defendant nos. 2 and 3 thereafter filed a petition under Order 39 Rule 4 CPC to set aside the *ex-parte* order dated 22.09.2014 which was dismissed vide order dated 21.03.2015. In appeal being Miscellaneous Appeal No. 121 of 2015, this Court vide order dated 07.07.2015 allowed the appeal and set aside the order dated 21.03.2015 passed by the Trial Court. The plaintiffs/ petitioners filed Special Leave Petition before the Hon'ble Supreme Court which was converted into Civil Appeal No. 8478/ 2016 and the Hon'ble Supreme Court set aside the order dated 07.07.2015 passed by this Court and restored the order of the Trial Court. It also appears that the Trial Court in its order dated 07.09.2019 directed both the parties to make sincere efforts for early disposal of the title suit.



8. Learned counsel for the petitioners has submitted that impugned order recalling the order dated 04.07.2015 is contrary to the mandate of Order VIII Rule 1 of the CPC and the learned Trial Court failed to consider that written statement of the said respondents was not filed within the statutory period prescribed under Order VIII Rule 1 of the CPC and no application for condonation of delay was filed with their written statement. It is further submitted that respondent nos. 1 and 2 filed the written statement after the expiry of 104 days without any valid explanation of such delay by the respondents and without recording such reason/ explanation in the impugned order the trial court accepted the written statement subject to cost. He has submitted that direction contained in order dated 20.01.2015 to defendants to file their written statement cannot be said to mean that the learned trial court fixed 10.02.2015 as last date for filing written statement as no reason in writing was recorded by the Trial Court while passing such order under Order VIII Rule 1 of the CPC. He has further submitted that the learned Court below has not indicated any valid reason to justify the acceptance of the written statement after expiry of the time fixed, the impugned order is liable to be set aside by this Court in exercise of the supervisory jurisdiction under Article 227 of



the Constitution of India.

9. On the other hand, learned Senior counsel for the respondents has submitted that the respondents have filed their written statement on 10.02.2015, i.e. the date fixed by the learned trial Court. It is submitted that upon due application of mind and consideration of facts as also consent of the parties that learned trial Court granted indulgence by fixing 10.02.2015 as the last date of filing written statement and as such, by necessary implication the learned trial Court permitted the respondents to file their written statement by 10.02.2015, which is deemed condonation of delay, if any. He has further submitted that the written statement was already filed in terms of order dated 20.01.2015 and taken on record and was well within the knowledge of the petitioners, however, due to change of the Court, the said fact was not verified from the record, the Court below observed in order 04.07.2015 that respondents are not willing to file written statement which is an apparent error on the face of record. It is further submitted that the written statement was filed in compliance of order dated 20.01.2015 and it was well within the condonable limit of Order VIII Rule 1 CPC and the learned Trial Court while exercising such discretion passed the said order with consent of the parties and



the petitioners cannot assail a consequential order based on the basis of such consequence. The principle of *res judicata* is a specie of the principle of estoppel.

10. Learned Senior counsel for the respondents further submits that in the present case the plaintiffs have not raised any objection for granting the time to file written statement vide order dated 20.01.2015 and the said order was not objected, the same attained finality. Accordingly, the plaintiffs cannot be permitted to raise the said issue in the different stage of same proceeding in view of the principle of *res judicata* applicable in different stages of same proceeding also. In support of his contention, he has referred the judgment of Hon'ble Supreme Court in **Ishwar Dutt Vs. Land Acquisition Collector & Anr. (2005) 7 SCC 190** wherein it was observed :

“The principle of res judicata, as is well known, would apply in different proceedings arising out of the same cause of action but would also apply in different stages of the same proceedings.”

11. As per the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908, the defendant is obliged to present a written statement of his defence within 30 days from the date of service of summon. Proviso thereto enables the court to extend the period up to 90 days from the date of service of



summons for sufficient reasons.

12. In **Atcom Technologies Ltd. Vs. Y.A. Chunawala & Co. and Others (2018) 6 SCC 639**, the Hon'ble Supreme Court in paragraph 20 observed that this provision has come up for interpretation before this Court in number of cases. No doubt, the words "shall not be later than Ninety days" do not take away the power of the Court to accept written statement beyond that time and it is also held that the nature of the provision is procedural and it is not a part of substantive law. At the same time, this Court has also mandated that time can be extended only in exceptionally hard cases.

13. The Supreme Court in **Desh Raj Vs. Bal Kishan** reported in **(2020) 2 SCC 708** observed in paragraph 13 that as regard the timeline for filing of written statement in a non-commercial dispute, the observation of this Court in a catena of decisions, most recently in **Atcom Technologies Ltd. Vs. Y.A. Chunawala & Co.** (supra) holds the field. The unamended Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of Courts to condone certain delays.

13. The time for filing of written statement was extended by the learned Court below by its order dated



20.01.2015, which remains unchallenged and has attained finality. The said order has not been challenged and the respondents/ defendants in the suit, availing this opportunity, have filed written statement, accordingly, on 10.02.2015, the learned Court below, in its order dated 04.07.2015, debarred the defendants for filing written statement on the basis that the written statement has not been filed which is contrary to the record and the said order was rightly recalled by the impugned order by reasoned order.

14. Mr. Y.V. Giri, learned Senior Counsel in support of his contention relied on the observation of Hon'ble Supreme Court in judgment of **Ganesh Santa Ram Sirur Vs. State Bank of India & Anr. (2005) 1 SCC 13**, wherein it was observed that it has to be presumed that delay, if any, was condoned by the appellate authority while entertaining the appeal and decide the same on merit.

15. This Court in the case of **Md. Kashim & Ors. Vs. Md. Jalil & Ors. (2005) 3 PLJR 309** observed that it is not in dispute that the court had itself granted adjournment for filing written statement and the defendants/ respondents within the time granted by the Court itself. So far the provision of Order VIII, Rule 1 of the Code of Civil Procedure is concerned, it has



already been held by the Hon'ble Apex Court in the case of **Kailash Vs. Nankhu** reported in **(2005) 4 SCC 480** that the said provision is directory and not mandatory in nature. Hence, such procedural provisions, even if peremptory in nature, are in essence for dilatory litigants to put themselves in order for avoiding unnecessary delay. Such provisions, however, cannot completely stop the Court from taking note of events and circumstances which happened within the said period.

16. The Hon'ble Supreme Court in **Mohd. Yunus Vs. Fajj Mohammad (2009) 3 SCC 513** observed that the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India is limited. It could have set aside the orders passed by the learned Trial Court only on limited grounds, namely, illegality, irregularity and procedural impropriety.

17. Having heard the learned counsel for the parties and considering the facts and circumstances of the case and the legal provisions as discussed above, I am of the considered opinion that there is no illegality or substantive procedural irregularity for interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. The Civil Miscellaneous petition is devoid of merit and liable to be



dismissed.

18. The Civil Miscellaneous petition is, accordingly, dismissed.

19. It appears from the record that Hon'ble Supreme Court vide order dated 31.08.2016 restored the order of injunction granted by the learned Trial Court and requested the learned Trial Court to expedite the Trial and complete the same as early as possible uninfluenced by the terms of the said order. The learned Trial Court also in its order dated 07.09.2019. directed both the parties to make sincere efforts for early disposal of the Title Suit.

20. In view of the aforesaid facts and circumstances, the learned Trial Court is requested to expedite the trial and complete the same as early as possible without giving unnecessary adjournment and both the parties are directed to cooperate the trial Court in early disposal of the title suit.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	07.04.2023
Uploading Date	20.06.2023
Transmission Date	

