

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 554 of 2023

1. Ganesh Prasad Gupta, aged about 78 years, son of Late Kedar Nath Gupta
2. Meera Gupta, aged about 68 years, wife of Ganesh Prasad Gupta
Both resident of Shiby Colony, Nehru Road, P.O. & P.S. Ramgarh,
District- Ramgarh (Jharkhand) **... Petitioners**

-Versus-

1. Manoj Kumar Gupta
2. Pankaj Kumar Gupta
3. Suraj Kumar Gupta
4. Ranjeet Gupta
5. Lav Kumar Gupta
6. Shravan Gupta
7. Om Prakash Gupta
Sl. Nos. 1 to 7 are sons of Late Sheo Prasad Gupta,
Sl. Nos. 1 to 7 are resident of Village- Nehru Road, P.O. & P.S. Ramgarh,
District- Ramgarh (Jharkhand)
8. Meena Devi
9. Arti Devi
10. Chandni Gupta
Sl. Nos. 8 to 10 are daughters of Late Sheo Prasad Gupta and are
residing at different places **... Opposite Parties**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners	: Mr. Rajeeva Sharma, Sr. Advocate Mr. Om Prakash, Advocate Ms. Maksuda Khatun, Advocate
For O.P. Nos.1, 2, 5, 6 & 7	: Mr. Samir Kumar Lall, Advocate Mr. Sanjay Kumar, Advocate

10/01.07.2025 Heard Mr. Rajeeva Sharma, learned senior counsel appearing for the petitioners and Mr. Samir Kumar Lall, learned counsel appearing for opposite party nos. 1, 2, 5, 6 and 7.

2. This petition has been filed under Article 227 of the Constitution of India for setting-aside the order dated 02.03.2023 passed by the learned Additional Civil Judge (Jr. Division)-III, Ramgarh in Title Suit No.99/2014, whereby, the learned Court has been pleased to dismiss the petition dated 30.11.2022 filed for recalling the orders dated 31.08.2015, 08.04.2016 and 18.09.2017.

3. Mr. Rajeeva Sharma, learned senior counsel appearing for the petitioners submits that the plaintiffs/opposite parties happened to be the owner and title holder of 0.48 acres of land situated in Village- Shibu Colony under Ramgarh Cantt. Bearing Khata No.232, Plot No.3344. The said land was purchased by the plaintiff vide registered deed of sale dated 23.08.1961 and after purchasing the aforesaid land, the plaintiff came in possession over the same and mutation was done and rent receipts were issued in his name. He submits that there was some dispute between the plaintiff and defendant nos. 1 and 2 which resulted into a proceeding under Section 144 Cr.P.C. before the Sub-Divisional Magistrate, Ramgarh being Case No.100/06 wherein for the first time, defendant nos. 1 and 2 disclosed that out of 0.48 acres of land, both of them had sold 0.24 acres of land vide registered deed of sale to defendant nos. 3 and 4. In this background, he submits that Title Suit No.99/14 was instituted by the plaintiff, who is father of opposite parties for right, title, interest and possession over the suit property in which notices have been issued upon the defendants and thereafter the petitioners/defendants appeared on 21.03.2015, but they did not file written statement and vide order dated 31.08.2015, the learned Court has been pleased to debar the petitioners to file their written statement in light of Order VIII Rule 1 of the CPC. He submits that the written statement was not accepted by the learned Court vide order dated 08.04.2016. He also submits that again the prayer was made to accept the written statement, however, the same was further rejected vide order dated 18.09.2017 on the ground of *res judicata* and, therefore, the prayer of the petitioners was rejected. He further submits that in view of the orders dated 31.08.2015, 08.04.2016 and 18.09.2017, the

learned Court declined to accept the written statement filed by the petitioners. He submits that the said prayers were made on the ground that the conducting Lawyer of the petitioners did not appear before the learned Court due to health problem. He further submits that the petitioners moved before this Court in W.P.(C) No.6994 of 2017 for setting-aside the order dated 18.09.2017 whereby the learned Court has been pleased to decline to accept the written statement filed by the petitioners. He submits that the said writ petition was dismissed as withdrawn vide order dated 28.01.2019 with liberty to the petitioners to approach before the learned trial court. He submits that pursuant to that, further petitions were filed before the learned Court on 07.03.2019 and 30.11.2022. He submits that however the learned Court by the impugned order dated 02.03.2023 has been pleased to reject the petition dated 30.11.2022 and declined to recall the said three orders on the ground of *res judicata* and further observed that the High Court has not given any liberty to file fresh petition before the learned trial court. He submits that in this background, such delay has occurred and that may kindly be condoned and proper direction may kindly be issued to accept the written statement filed by the petitioners and impugned order may kindly be set-aside. According to him, Order VIII Rule 1 of the CPC is not mandatory, it is directory, as has been held in different cases by the Hon'ble Supreme Court as well as High Courts. On these grounds, he submits that this petition may kindly be allowed.

4. On the other hand, Mr. Samir Kumar Lall, learned counsel appearing for opposite party nos. 1, 2, 5, 6 and 7 opposed the prayer and submits that casual approach has been adopted by the petitioners/defendants and one

petition after other petitions have been filed, which have been decided by the learned Court by the said three orders. He further submits that even before this Court in the said writ petition, simple withdrawal was obtained by the petitioners and no liberty was provided to the petitioners by the High Court and in view of that, the learned Court has rightly held that the said petition is barred by *res judicata*. On these grounds, he submits that this petition may kindly be dismissed.

5. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that it is an admitted position that the petitioners/defendants appeared before the learned Court on 21.03.2015, however, not filed written statement and that situation compelled the learned Court to pass the order dated 31.08.2015 debarring the petitioners herein to file written statement. Thereafter, the petitioners further filed petitions dated 08.04.2016 and 10.06.2016, which were rejected vide order dated 18.09.2017. In the first petition, the ground was taken about ill health of the learned Lawyer and in other petitions, no cogent reason has been provided for non-appearance.

6. Further, W.P.(C) No.6994 of 2017 was filed by the petitioners before this Court for setting-aside the order dated 18.09.2017, which was dismissed as withdrawn vide order dated 28.01.2019. Looking into the said order, it transpires that the liberty was not provided to the petitioners and it was a simple withdrawal on the prayer of the petitioners and, thereafter, the petition dated 30.11.2022 was filed by the petitioners for recalling the orders dated 31.08.2015, 08.04.2016 and 18.09.2017 and by the impugned order dated 02.03.2023, the learned Court has been pleased to reject the same

considering that the said petition is barred by *res judicata* and the High Court has not given any liberty to file a fresh petition before the learned Court.

7. So far as filing of the written statement is concerned, the Courts are very liberal in allowing such petitions if cogent reasons are made out to allow the same. This Court is conscious of the fact that the Code of Civil Procedure must be guarded as something designed to facilitate justice and further ends and not penal enactment for punishment and penalties, but at the same time the Court has to consider that the intent of legislature fixing the upper time-limit of 90 days in filing of the written statement, cannot be allowed to be frustrated on the flimsy ground. There is no restriction in Order VIII Rule 1 of the CPC that after expiry of 90 days, further time cannot be granted. The Court is having wide power to extend the period of filing the written statement, however, that order cannot be made in a routine manner. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of ***Atcom Technologies Ltd. v. Y.A. Chunawala and Co.***, reported in ***(2018) 6 SCC 639***, wherein, at paragraphs 19 and 20, it has been held as under:

"19. *It has to be borne in mind that as per the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908, the defendant is obligated to present a written statement of his defence within thirty days from the date of service of summons. Proviso thereto enables the Court to extend the period up to ninety days from the date of service of summons for sufficient reasons. Order 8 Rule 1 of the Code of Civil Procedure, 1908 reads as under:*

"1. Written statement.—*The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."*

20. *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. We would like to reproduce the following discussion from Salem Advocate Bar Assn. (2) v. Union of India [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344] : (SCC p. 364, para 21)*

"21. ... There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

8. By one petition, three orders have been sought to be recalled and those orders have attained finality as the challenge of that has not been made and one order challenged before this Court, has been simply withdrawn by the petitioners.

9. Further, in course of arguments it has also been pointed out by Mr. Samir Kumar Lall, learned counsel appearing for opposite party nos. 1, 2, 5, 6 and 7 that the issue has been framed and one witness has been examined on behalf of the plaintiffs.

10. It is well-settled that even in a pending suit if similar nature of petition is being filed, which has already been decided earlier, the principle of *res judicata* is attracted. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of **Mahboob Sahab v. Syed Ismail and others**, reported in **(1995) 3 SCC 693**.

11. The Hon'ble Supreme Court in the case of ***Kailash v. Nanhku***, reported in ***(2005) 4 SCC 480*** has held that the provision of Order VIII Rule 1 of the CPC stipulating filing of written statement within 30 days which may be extended upto 90 days is not mandatory, but only directory and in suitable cases, the period could be relaxed, however, it has been held that the delay could not be condoned as a matter of course, but on disclosure of compelling reasons beyond the control of the parties. Relevant observations made in this regard are extracted herein below:

"42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

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."

12. In the instant case, as has been discussed herein above the only reason disclosed by the petitioners for not being able to file written statement by way of filing different petitions is that the Lawyer was not well, however,

no supporting documents have been brought before the learned Court and, thereafter, further petition has been filed, which has been decided by the learned Court by the impugned order. The learned Court has rightly held that the said petition is barred by *res judicata* and there is no liberty by the High Court to file fresh petition before the learned trial court.

13. The orders passed by the Court can be set-aside only on the limited ground of illegality, irrationality and procedural impropriety. What has been discussed herein above, the petitioners herein are responsible for inviting such situation and unnecessarily, the Courts are being blamed of delay disposal of the cases.

14. In view of the aforesaid facts, reasons and analysis, the Court finds that there is no illegality in the impugned order and, as such, this petition is dismissed.

(Sanjay Kumar Dwivedi, J.)

Ajay/ **A.F.R.**