

## Ranjit Kumar Singh Vs Achintya Kumar Sarkar

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 28, 2025

**Acts Referred:** Constitution of India, 1950 Article 227

**Hon'ble Judges:** Sanjay Kumar Dwivedi, J

**Bench:** Single Bench

**Advocate:** Amar Kumar Sinha, Sandeep Verma, Navneet Toppo

**Final Decision:** Allowed

### Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Amar Kumar Sinha, learned counsel for the petitioners and Mr. Navneet Toppo, learned counsel for the sole opposite party.

2. This petition has been filed under Article 227 of the Constitution of India, wherein, the prayer is made for quashing the order dated 23.05.2023

passed by the learned Sub-Judge-VI, Hazaribag in Title Suit No.91 of 2019, whereby, the learned court has been pleased to refuse to accept the

written statement filed by the defendants/petitioners. The prayer is also made for direction to be issued to accept the said written statement.

3. Mr. Amar Kumar Sinha, learned counsel for the petitioners submits that the plaintiff/opposite party has instituted Title Suit No.91 of 2019 in the

court of the learned Civil Judge (Senior Division)-I, Hazaribag against the defendants/petitioners praying therein a decree for adjudication of the

plaintiffs right, title, interest and possession over Schedule-1(A) and I(B) lands and for declaration that the defendants have no right, title, interest and

possession over the same. He submits that notice has been issued upon the defendants and defendant nos. 4 and 5 had appeared before the learned

court on 07.12.2021 and defendant nos. 1, 2 and 3 had appeared on 10.06.2022. He submits that vide order dated 02.08.2022, learned court has

allowed the defendants to file written statement by 22.08.2022 and the same was filed on 22.08.2022 and in spite of that, the learned court has been

pleased to refuse the written statement. He relied upon the judgment passed by this Court in the case of Shaikh Salim Haji Abdul Khayumsab v.

Kumar & others, reported in 2006 (1) JCR 112 (SC). He refers paragraph 19 of the said judgment, which reads as under:

19. The matter can be looked at another angle. Undisputedly the trial court had granted time up to 19.2.2004 which undisputedly fell beyond the 90 days'

period. Since the 19.2.2004 happened to be a holiday, the Written Statement was filed on the next day. Had the Written Statement been filed on 19.2.2004,

obviously the court could not have refused to accept the written statement as it was within the time granted by it. Merely because of a fortuitous circumstance the

written statement came to be filed next day i.e. on account of the date fixed being a holiday that cannot make the Written Statement, filed unacceptable.

Relying on the above judgment, he submits that it has been held in that case that even within the statutory time if written statement was not filed and

the court has called upon to file written statement, that can be accepted.

4. Learned counsel for the petitioners further submits that the Order VIII Rule 1 is directory not mandatory and that has been held in several

judgments by the Hon'ble Supreme Court as well as by the High Courts. He relied upon the judgment passed in the case of Kailash v. Nanhku,

reported in (2005) 4 SCC 480. On these grounds, he submits that the impugned order may kindly be quashed.

5. On the other hand, Mr. Navneet Toppo, learned counsel for the sole opposite party opposed the prayer and submits that within statutory time, the

written statement was not filed by defendant nos. 4 and 5. He submits that thereafter the defendants have jointly filed the written statement and in

view of that, the learned court has rightly passed the said order. He relied upon the judgment passed in the case of Yashpal Jain v. Sushila Devi and

others, reported in MANU/SC/1184/2023. He submits that in paragraph 42 of the said judgment, guidelines have been issued for early disposal of the

cases and it has been held that within time written statement is required to be filed. He submits that sufficient ground has not been shown to condone

the delay.

6. It is an admitted position that the suit is still pending and the defendants have appeared before the learned court and the learned court vide order

dated 02.08.2022 directed to file written statement by 22.08.2022 and on the next date i.e. 22.08.2022, written statement was filed. If such a situation

was there, the case of the petitioners is fully covered in light of the judgment relied by the learned counsel for the petitioners in the case of Shaikh

Salim Haji Abdul Khayumsab (supra).

7. In the case of Kailash (supra), the Hon'ble Supreme Court has held that the Order VIII Rule 1 is directory not mandatory and the court is not

powerless to accept the written statement even it is filed at belated stage.

8. It is admitted position that the court has allowed the defendants to file written statement and on the next date of listing, the written statement was

already filed. Thus, the case of the petitioners is fully covered in light of the judgment passed in the case of Kailash (supra).

9. Recently, the Hon'ble Supreme Court in the case of Bharat Kalra v. Raj Kishan Chabra, reported in 2022 LiveLaw (SC) 465 allowed the

written statement to be taken on record in light of the judgment of the Hon'ble Supreme Court in the case of Kailash (supra). Even 193 days

delay in filing the written statement was condoned.

10. So far as the judgment relied by the learned counsel for the sole opposite party is concerned, in that case the suit was already proceeded and

seeing the inordinate delay of pendency of the said suit, that order has been passed, whereas, in the present case even issue has not been framed as

yet and written statement was filed within the time, as allowed by the learned court. Thus, that judgment is not helping the opposite party.

11. In view of the above facts, reasons and analysis, the order dated 23. 05.2023 passed by the learned Sub-Judge-VI, Hazaribag in Title Suit No.91

of 2019 is, hereby, quashed. The learned court will accept the said written statement, which is already on the record of the said title suit and the

learned court will proceed in accordance with law.

12. Accordingly, this petition is allowed in above terms and disposed of.

13. Pending I.A., if any, is disposed of.