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Jharkhand High Court

Case No: Writ Petition (C) No. 662 of 2010

Sharad Kumar	APPELLANT
Vs	
Din Bandhu and Another	RESPONDENT

Date of Decision: April 28, 2011

Acts Referred:

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

Hon'ble Judges: D.N. Patel, J

Bench: Single Bench

Judgement

D.N. Patel, J.
The present writ petition has been preferred by original Defendant No. 1 in T.(D). S No. 67 of 2007 and he is challenging the order passed by the trial court, namely, learned Sub JudgeVII, Deoghar dated 21st January, 2010, whereby, the written statement filed by Defendant No. 1 was not taken on record mainly on the ground of delay of approximately four months.

2. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case as well as looking to the reasons for delay in filing the written statement preferred by Defendant No. 1, it ought to have been taken on record. It has been held by the Hon''ble Supreme Court in the case of Kailash Vs. Nanhku and Others, as well as in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), that Order VIII Rule 1 of the CPC is procedural in nature and not mandatory.

3. In view of the aforesaid facts, the delay ought to have been condoned by the trial court and, therefore, I hereby quash and set aside the order passed by learned Sub JudgeVII, Deoghar dated 21st January, 2010 in T.(D).S No. 67 of 2007. I also hereby direct the Petitioner (original Defendant No. 1) to file his written statement. The written statement filed by original Defendant No. 1 is ordered to be taken on record in T.(D).S No. 67 of 2007. Looking to the time already consumed after filing of the suit, I hereby direct the trial

court to expedite the hearing of T.(D).S No. 67 of 2007.

4. The writ petition is allowed and disposed of.