

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8988 of 2012**

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Amarnath Thakur & Anr

.... .... Petitioner/s

Versus

Kumar Nath Thakur & Ors

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ashok Kumar Choudhary

For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**  
**ORAL ORDER**

7 03-10-2017

Heard learned counsel Mr. Ashok Kumar Choudhary

for the petitioner and learned counsel Mr. Mritunjai Kumar for  
plaintiff-respondent no.1.

2. The learned counsel Mr. Choudhary on behalf of  
the defendants-petitioners submitted that there is some delay in  
filing the written statement but the written statement has already  
been filed in the year 2008. The plaintiff-respondent's suit for  
partition was dismissed for default prior to filing the written  
statement but after restoration of the partition suit without notice  
to the defendants, the learned trial court refused to accept the  
written statement filed by the petitioners in the year 2008 by the  
impugned order of the year 2010. The learned counsel further  
submitted that the petitioners shall be greatly prejudiced if they are  
debarred from contesting the partition suit because of poverty and  
because of the fact that the petitioners are rustic villagers, there



was delay in filing the written statement.

3. The learned counsel for the respondent admitted the fact that the plaintiff-respondent is also a poor poojari.

4. In view of the above facts submitted by the learned counsels for the parties, it appears that the parties are very poor poojaries and do not know the law and because of their advice the written statement could not be filed within the prescribed period. In view of the above facts and circumstances of the case, in my opinion, if the impugned order is allowed to stand, the petitioners may not be able to protect their interest in the partition suit and, therefore, it will occasion failure of justice. However, at the same time it can be said that there is some laches on the part of the petitioners.

5. Thus, this writ application is allowed, the impugned order is set aside and the written statement filed by the defendants-petitioners is hereby accepted subject to payment of cost of Rs.1,000/-(Rupees One Thousand) to be paid by the petitioners to the plaintiff-respondent in the lower court within one month from today.

Harish/-

**(Mungeshwar Sahoo, J)**

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