

ORDER BELOW EXH. 128 IN R.C.S. No. 64/2012
(Tanibai Vs. Mohan and others)

CNR NO. MHLA13-000017-2012

The present application is filed by the defendant no. 6 stating that the application of the defendant no. 6 of reopening of evidence is allowed and allowed him to lead his evidence. Previously, the defendant nos. 5 & 6 had appeared through their advocate jointly and defendant no. 5 had filed his written statement below Exh. 30. The defendant no. 6 on instructions of the previous advocate adopted the written statement filed by the defendant no. 4 vide pursis at Exh. 34. The defendant no. 6 previously had not filed duly signed and verified written statement before the Court, due to absence of technical knowledge of the law. Today, the defendant no. 6 is willing to file duly signed and verified written statement as it is written statement filed by defendant no. 5 vide Exh. 30. The defendant no. 6 without any addition or deletion or substitution of a single word filing duly signed written statement. Due to filing of verified written statement no prejudice will be caused to the plaintiff as only the technical defect is being cured by filing signed and verified written statement, therefore, by allowing this application permission may be granted to defendant no. 6 for filing duly signed and verified written statement as per adopted written statement at Exh. 30 filed by the defendant no. 5.

2. The ld. advocate for the plaintiff filed his say and objected that the reason mentioned in the application is not proper. The defendant no. 6 has already filed his pursis at Exh. 34 and therefore there is no need to permit the defendant no. 6 to file his duly signed and verified written statement. The application is filed only to prolong the matter, therefore, it may be rejected.

3. Heard both the sides. Perused the record.

4. The ld. advocate for the defendant no. 6 relied on the judgment of the Hon'ble Apex Court in the Case of Uday Shankar Triyar Vs. Ram Kalewar Prasad Sing and another reported in AIR 2006 SC 269, he further relied on the judgment of the Hon'ble Bombay High Court in the Case of Omprakash Dinodiya Vs. Smt. Aashalata Karmarkar and others reported in ALL MR 2002 (2) 108.

5. After perusal of record it is seen that the defendant no. 6 by filing pursis at Exh. 34 adopted the written statement filed by the defendant no. 5 at Exh. 30. O. 6 of the Code of Civil Procedure speaks about pleading generally. Pleading means plaint or written statement. O 6 R. 14 states that every pleading shall be signed by the party and his pleader if any. Provided that where a party to the pleading by reason of absence or for other good cause unable to sign the pleading it may be signed by any person duly authorized by him to sign the same.

6. I have gone through the case laws relied by the ld. advocate for the defendant no.6. In the case of *Uday Shankar Triyar Vs. Ram Kalewar Prasad Sing and another reported in AIR 2006 SC 269*, the Hon'ble Apex Court held that O. 6 R. 14 of the C.P.C. requires that every pleading shall be signed by the party and his pleader. If the plaint is not signed by the plaintiff or his duly authorized agent due to any bonafide error the defect can be permitted to be rectified. Therefore, the same analogy can be applied in the present case, as the procedural defects in regularities which are curable should not be allowed to defete substantive rights or to cause injustice. I have gone through the another judgment filed by the defendant no. 6 of the Hon'ble Bombay High

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Court in the Case of *Omprakash Dinodiya Vs. Smt. Aashalata Karmarkar and others reported in ALL MR 2002 (2) 108*, wherein it was held that the provisions of R. 14 & 15 of O. 6 of the CPC are being procedural can be cured at later stage of proceeding. Therefore, considering the ratio laid down by the Hon'ble Apex Court & The Hon'ble High Court, the technical defects can be cured at later stage of proceeding. Therefore, it is necessary to permit defendant no. 6 to file his duly signed and verified written statement.

7. It is seen that the defendant no. 6 filed adoption pursis at Exh. 34 on 14/6/2012. Since then he had an opportunity to file such kind of application at earlier stage. The defendant no. 6 has not avail the remedy at earlier stage and consume lot of time, therefore the application needs to be allowed subject to costs. Hence, I pass the following order.

ORDER

1. The application is allowed subject to costs of Rs. 500/- (Five Hundred Rupees), which be credited to the Government.
2. The defendant no. 6 is permitted to file his duly signed and verified written statement as per adopted written statement at Exh. 30 filed by the defendant no. 5.

Dated 28/1/2020

**(O. M. Mali)
Civil Judge J.D. Renapur.**