

**ORDER BELOW EXH. 146**  
(CNR NO. MHSN110002292009)

1. Present application is moved by the defendant no. 5 to 8 for canceling the adopt Pursis (Exh. 47) filed by them on record, while adopting the Written Statement (Exh. 36) of the contesting defendant no. 1 and 2.

2. Application shows that the defendant no. 1 and 2 have previously filed their Written Statement (Exh. 36) and contested the suit. That Written Statement was adopted by the applicant defendants by filing the pursis in question on 27.08.2009. Now, after period of ten years, the applicant defendants are claiming that were mis-led by the defendant no. 1 and 2 and they have fraudulently obtained the pursis (Exh. 47) from them at that time. In the application, the applicant defendant have also narrated facts in detail as to how the defendant no. 1 and 2 have made false claim in the Written Statement (Exh. 36), which were contrary to the interest of the applicant defendants and how the Pursis in question was fraudulently obtained and filed on record. On such grounds, the applicant defendant no. 5 to 8 have moved this application with a prayer to cancel the adopt Pursis (Exh. 47) and to permit them to file their Additional Written Statement.

3. Court has called say of the defendant no. 1 and 2 on the application. These defendants have filed their Say vide Exh. 148 and contested the application. In the Say (Exh. 148), the defendant no. 1 and 2 have claimed that the applicant defendants were well aware about the facts narrated in the Written Statement (Exh. 36) and after reading and understanding the same, they have filed the adopt Pursis Exh. 47 on record. The defendant no. 1 and 2 have further claimed that since the applicant defendants have previously filed the adopt Pursis (Exh. 47) on record, they cannot cancel the same at this stage and this Court cannot permit them to file additional Written Statement and to take new stand, contrary to the stand taken by the defendant no. 1 and 2 in their WS. The defendant no. 1 and 2

have further claimed that the applicant defendants have made false claim in their application regarding ignorance of contents of the Written Statement (Exh. 36) and they have moved this application at this belated stage in order to delay the suit. With such submission, it was prayed to reject the application.

4. Heard both sides at length. Perused record and certified copy of Exh. 1 of RCC no. 63/2009, relied upon by the applicant defendants.

5. On perusal of application, it can be seen that the applicant defendants are claiming two distinct reliefs, firstly, cancellation of the adopt Pursis (Exh. 47) and secondly, permission to file additional Written Statement. Record shows that previously the defendant no. 1 and 2 have filed their Written Statement (Exh. 36) on record. Thereafter, the applicant defendant no. 5 to 8 have appeared in the suit and they have adopted the Written Statement (Exh. 36) of defendant no. 1 and 2 by filing adopt Pursis (Exh. 47) on record in the year 2009. It will be needless here to mention that when a party to the suit adopt a stand taken by other party by filing such Pursis on record, the stand of such other party becomes the stand of former party. This means the Written Statement (Exh. 36) filed on record has become the Written Statement of the applicant defendants also. Now, if the adopt Pursis (Exh. 47) is canceled, as claimed by the applicant defendant no. 5 to 8, they can file Written Statement, which might be contrary to claim made in previous Written Statement (Exh. 36). However, there is no such provision in CPC. Once a party to the suit has taken a specific stand, during pendency of the suit such party cannot deviate from it. The contents of the application shows that the applicant defendants are intending to take a stand, which is suitable to the claim of plaintiff and against the defendant no. 1 and 2. Since the applicant defendants have previously chosen the stand of defendant no. 1 and 2 by filing the adopt Pursis in question, they cannot be permitted to cancel said Pursis.

6. Further, in present application the applicant defendants have made allegation of misrepresentation by the defendant no. 1 and 2 while obtaining the Pursis in question. In support of such contention, the applicant defendants have filed certified copy of Exh. 1 of RCC no. 63/2009 on record. This Complaint Case was filed by the applicant defendants against the defendant no. 1 and 2, on same grounds, which are narrated in this application. This means the applicant defendants were well aware about the alleged unwarranted act in the year 2009 itself and therefore they have filed aforesaid complaint case against the defendant no. 1 and 2. If it is so, it was possible for the applicant defendants to move application, like present application, in the suit in the year 2009 itself or within reasonable period after that. However, the applicant defendants have kept mum for a considerable period of ten years and now they have moved this application. Further, said RCC no. 63/2009 was dismissed for want of prosecution in the year 2009 itself. If the applicant defendants were really aggrieved with the unwarranted act of the defendant no. 1 and 2, as claimed by them in said case, it was possible for them to continue with said case and get the accused punished. However, surprisingly, said complaint was dismissed in default of these defendants.

7. Further, at the time of hearing of this application this Court has questioned the learned counsel appearing for the applicant defendants as to why these defendants have not moved this application in the year 2009 and why they have waited for ten long years. It was submitted that the applicant defendants are illiterate and they are ignorant about the law and legal procedure. However, the submission forwarded is not convincing. The applicant defendants have filed aforesaid complaint case in the year 2009 itself and on same grounds. If the defendants were able to file a complaint case in this Court in the year 2009, it was also possible for them to take appropriate steps in this suit and in the year 2009 itself. However, no such application was moved earlier and this fact itself shows that there is no

substance in the allegation of the defendants that they were mis-led in any manner by the defendant no. 1 and 2 while obtaining the Pursis in question. Considering all these facts, and as there is no such provision in CPC, the Pursis in question cannot be cancelled and the relief sought by the applicant defendants cannot be granted to them.

8. Further, the applicant defendants are also seeking permission to allow them to file additional Written Statement in the suit. Now, as the adopt Pursis (Exh. 47) cannot be cancelled, if permission filed additional Written Statement is granted, it may create lot of complications. If such relief is granted, the applicant defendants will prefer to file additional Written Statement with such claim, which might be contrary to the claim made in previous Written Statement (Exh. 36). These defendants will definitely file Additional Written Statement, which will support the plaintiff and contrary to the interest of the defendant no. 1 and 2. Hence, considering above possibility, it will be not proper to grant this relief also to the applicant defendants. Hence, considering all above facts, the application deserves to be rejected, as it is devoid of merit. Therefore, I am passing following order,

**ORDER**

1. The application Exh. 146 is hereby rejected.

Place :- Atpadi.  
Date :- 18.09.2019

( J. R. Ghadge )  
Jt.Civil Judge, Jr. Dn., Atpadi.  
Dist. Sangli.

**Certificate**

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer - M. M. Buchade  
Court - Jt. Civil Judge Jr. Div. Atpadi.  
Date - 18.09.2019  
Order signed by the  
Presiding Officer on - 18.09.2019  
Order uploaded on - 20.09.2019