

(1952) 04 BOM CK 0005

In the Bombay High Court

Case No : Civil Revision Application No. 499 of 1951

Dahyabhai Girdhardas

APPELLANT

Vs

Bobaji Dahyaji Kotwal and Others

RESPONDENT

Date of Decision : 18-04-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14, Order 6 Rule 17

Citation : AIR 1953 Bom 28 : (1952) 54 BOMLR 828 : (1953) ILR (Bom) 188

Hon'ble Judges : Chagla, C.J

Bench : Single Bench

Advocate : D.V. Patel, for the Appellant;

Judgement

[1] The suit out of which this revision application arises was filed in the Court of the Nyayadish at Ghodasar and the plaint was signed by the plaintiff's son Vadilal Dayabhai and he was described as a kulmukhtyar. After merger the suit was transferred to the Civil Judge at Kaira. The plaintiff then applied for an amendment of the plaint by striking off the signature of his son and by being permitted to sign the plaint. The plaintiff realised that his son had no proper authority to sign the plaint and that was the reason for this application for amendment. The learned Judge dismissed the application, and it is from that order that this revision application is preferred.

[2] Now, there are two decisions of this Court to which my attention has been drawn bearing on the Question as to whether failure to sign the plaint properly is such a material defect that the Court would be entitled to say that in the absence of a plaint being properly signed there is no suit before the Court at all, or whether the failure to sign the plaint properly is merely a formal defect which can be cured at any stage on a proper application being made to that effect. The former view has been taken by Sir John Beaumont in *Chunilal Bhagwanji v. Kanmal Lalchand*, 46 Bom. L.R. 350. In that case a person acting under a power-of-attorney executed by a next friend of a minor presented a plaint and signed it, and the learned Chief Justice held that he had no authority to do so and that the

plaint was not a valid plaint. The learned Chief Justice further held that the suit was never properly instituted, and that a defect of that sort could not be cured by amendment, and the natural course open to the plaintiff was to file a fresh plaint. With respect, the learned Chief Justice did not consider an earlier decision of this Court in Nanjibhai v. Popatlal, 34 Bom. L.R.. 628. As a matter of fact no authorities whatever were cited before the learned Chief Justice.

Turning to the other judgment of this Court in Nanjibhai v. Popatlal, Mirza J. there held that a plaint filed within time can, if not properly signed, be allowed to be signed by the plaintiff at a later stage irrespective of the bar of limitation. There the munim of the plaintiff had signed the plaint without having a general power-of-attorney and the plaint was not therefore properly signed, and the learned Judge allowed the plaint to be amended. There is a judgment of the Privy Council which also perhaps throws some light on this matter, and that is Stohini Mohwm Das v. Bungsi Buddan Saha Das, 17 cal. 580. In that case the suit was by three co-plaintiffs, and one of the points urged before the Privy Council was that the plaint was signed and verified by one plaintiff alone, and the answer given in the judgment of the Privy Council was that that was immaterial as there was no rule providing that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint. The rule requiring a plaint to be signed applies to all the plaintiffs, and if the Privy Council thought that the failure of one of the co-plaintiffs to sign the plaint was immaterial, it clearly shows that the Privy Council considered this a merely formal error and not a serious defect which went to the root of the matter and which vitiated the-whole institution of the suit to such an extent that the Court must consider that the suit was not properly instituted at all. If Sir John Beaumont was right in the view that he took, then the suit before the Privy Council was never instituted as far as the co-plaintiffs were concerned. Therefore, with very great respect, in my opinion the learned Chief Justice was in error in the view that he took. Ordinarily I would have been bound by his judgment as a judgment of co-ordinate authority, but there is the judgment of Mirza J. and also the judgment of the Privy Council to which I have referred. With respect I prefer the judgment of Mirza. J. in Nanjibhai v. Popatlal.

[3] I, therefore, set aside the order passed by the learned Judge below and direct that, he should allow the plaintiff to amend the plaint by striking out the signature of the plaintiff's son and allowing the plaintiff to sign the plaint. No order as to costs.

[4] Order set aside.