SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			WPMS/3004/2017 Gaurav Sahi --Petitioner **Versus** Satendra Singh Kshetri & Others --Respondents **Hon'ble Manoj Kumar Tiwari, A.C.J.** Mr. Chandra Shekhar and Mr. Sachin Panwar, Counsel for the petitioner. Mr. Priyanshu Gairola, Advocate, for the respondents. (2) Petitioner has challenged order dated 30.5.2014 and 1.8.2014, passed by 2nd Additional Civil Judge (Jr. Div.), Dehradun in O.S. No. 521 of 2012. By the order dated 30.5.2014, petitioner's application seeking substitution of all the legal heirs of the plaintiff was rejected on the ground that signature of one of the legal heirs, out of three, is not present on the substitution application and vakalatnama. Thereafter, vide order dated 1.8.2014, the suit was dismissed as abated under Order 22 Rule 3 CPC. Petitioner challenged aforesaid orders by filing a revision, which was dismissed vide order dated 27.9.2017, passed by 2nd Additional District Judge, Dehradun. Thus feeling aggrieved, petitioner has preferred this writ petition. (3) Petitioner has challenged the order dated 30.5.2014 by contending that there is no provision in Code of Civil Procedure (CPC) which mandates that all the legal heirs of the plaintiff have to put their signature on the application seeking substitution. Learned Counsel for the petitioner refers to Rule 27 of General Rules (Civil), 1957, which is extracted below:

			*"**27. Person presenting application.*** *Every application or petition shall at the time of presentation bear the name and also full signature or thumb mark of the person actually presenting the same together with the date of presentation."* (4) Learned Counsel for the petitioner thus contends that it is not mandatory that all the legal heirs have to put their signature on the application for substitution and the application filed by the petitioner was well within time and strictly as per requirement of Rule 27 of General Rules (Civil), therefore learned Trial Court was not justified in rejecting the application for substitution, moved by the petitioner. He further submits that out of three legal heirs of the plaintiff, only two were available in India at the time of making application and the third one (Smt. Vandana-proforma respondent no. 10) was residing in South Africa, who executed power of attorney in favour of her sister Smt. Bhawana (proforma respondent no. 9) on 31.3.2014. (5) Mr. Priyanshu Gairola, learned Counsel for the respondent no. 1 to 8, however, submits that on the date of making application for substitution, power of attorney was not executed by Smt. Vandana in favour of her sister Smt. Bhawana, as the application was filed on 25.11.2013. Mr. Gairola, however, concedes that signature of all the legal heirs on the substitution application is not mandatory as per provisions of CPC. (6) Hon'ble Supreme Court in the case of Uday Shankar Triyar v. Ram Kaleshwar Prasad Singh & Another, reported as (2006) 1 SCC 75, has held as under: *"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to*

deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are :-

i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.

ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

iii) where the non-compliance or violation is proved to be deliberate or mischievous;

iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.

v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

(7) The view taken by learned Trial Court in the impugned order appears to be too hyper technical, which is not supported by any statute. Law is well settled that rules of procedure are handmaid of justice, which are meant to facilitate the course of justice and not to scuttle the same. If one of the legal heirs of the plaintiff is at a place from where he cannot come and sign the application for substitution, it does not mean that other legal heirs who are available cannot move application for substituting the legal heir, who is at a distant place.

(8) For the aforesaid reasons, writ petition is allowed. Impugned orders dated 30.5.2014, 1.8.2014 and 27.9.2017 are set aside. Substitution application, filed by the petitioner, is allowed. Trial Court is requested to expedite hearing of the suit and make endeavour to decide the same within two years.

(Manoj Kumar Tiwari, A.C.J.)

21.11.2026
Pr
PRABODH KUMAR
