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**4th SURANNA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

**Before
THE HON'BLE HIGH COURT
Of Badlapur**

**IN CIVIL APPEAL NO. _____ OF 2021
[FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDUS]**

MR. CHETRI & Ors.

...PLAINTIFF

VERSUS

**STATE
HEALTHONE**

**...DEFENDANT 1
...DEFENDANT 2**

**MEMORIAL FILED ON BEHALF OF PLAINTIFF
- MR. CHETRI & Ors.**

MOST RESPECTFULLY SUBMITTED

COUNSEL FOR THE PLAINTIFF



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1.	CODE OF CIVIL PROCEDURE, 1908	<i>PASSIM</i>
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3.	DISASTER MANAGEMENT ACT, 2005	<i>PASSIM</i>
4.	EPIDEMIC DISEASES ACT, 1897	<i>PASSIM</i>

3. TREATISES, BOOKS, REPORTS AND DIGESTS

SR.NO.	NAME OF THE TREATISE, BOOK, REPORT AND DIGESTS WITH THE AUTHOR OR PUBLISHER
1.	Ratanlal & Dhirajlal, The Law of Torts, Lexis Nexis, Gurgaon 26 th edition 2010

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2.	P.M. Bakshi, The Constitution of India, Twelfth Edition, Universal Law Publishing Co. Pvt. Ltd. 2013, New Delhi
3.	Dr. R.K. Bangia, Law of Torts, Twenty Third Edition, 2010, Allahabad Law Agency, Mathura Road, Faridabad (Haryana)

4. LAW DICTIONARIES/LEXICONS

SR.NO.	LAW DICTIONARIES/LEXICONS
1.	<i>Merriam Webster's Dictionary</i>
2.	<i>Black's Law Dictionary</i>
3.	<i>Wex Definitions Team</i>

5. IMPORTANT DEFINITIONS

1. **“Plaintiff”** for the purpose of this Memorandum shall stand for **“Mr. Chetri & Ors.”**
2. **“Respondent”** for the purpose of this Memorandum shall stand for **“State and HealthONE”**

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6. DYNAMIC LINKS

(OFFICIAL WEBSITES APPROVED BY THE APEX COURT OF UNION OF INDIA)

1. www.manupatra.com
2. www.sconline.com
3. www.judis.nic (Official website of the Supreme Court of India: Unreported Judgments)
4. www.westlawindia.com
5. www.heinonline.com
6. www.livelaw.in

7. LIST OF ABBREVIATIONS

SR.NO.	ABBREVIATIONS	FULL FORM
1.	&	AND
2.	AIR	ALL INDIA REPORTER
3.	ALL	ALLAHABAD
4.	ANR.	AND OTHERS
5.	ART.	ARTICLE
6.	BOM	BOMBAY
7.	CAL	CALCUTTA
8.	CBI	CENTRAL BUREAU OF INVESTIGATION
9.	CL	CLAUSE
10.	CHH	CHHATISGARH

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11.	ETC.	ET CETERA
12.	HC	HIGH COURT
13.	HON'BLE	HONOURABLE
14.	HP	HIMACHAL PRADESH
15.	I.E.	THAT IS
16.	JOUR	JOURNAL
17.	L.R.	LAW REVIEW
18.	LTD	LIMITED
19.	NO.	NUMBER
20.	ORI	ORISSA
21.	ORS.	OTHERS
22.	P.	PAGE
23.	S.	SECTION
24.	SC	SUPREME COURT
25.	SCBA	SUPREME COURT BAR ASSOCIATION
26.	SCC	SUPREME COURT CASES
27.	SCR	SUPREME COURT REPORTERS
28.	SLR	SERVICE LAW REPORT
29.	SR.	SERIAL NUMBER
30.	Ss.	SUB SECTION
31.	U.O.I.	UNION OF INDIA
32.	U.S.	UNITED STATES
33.	U.K.	UNITED KINGDOM

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34.	V.	VERSUS
35.	VOL.	VOLUME

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STATEMENT OF JURISDICTION

The Plaintiff humbly submits before the Honourable High Court of Badlapur that by powers vested in it by the virtue of Article 226 of the Constitution of Indus, it has the inherent jurisdiction to hear, adjudicate and dispose the instant matter.

Article 226 of the Constitution of Indus provides that:

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

The present memorandum sets forth the facts, contentions and arguments in the present case.

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STATEMENT OF FACTS

1. The Union of Indus is a Socialist, Secular, Democratic Republic. Indus witnessed an outbreak of the deadly Coronavirus Disease known as Covid-19; following which the Government imposed a nationwide lockdown. Indus has approximately 45,000 private hospitals and 25,000 thousand public hospitals. Constitution of Indus recognized the Right to Health as an integral part of Right to Life under Article 21 of the Constitution.
2. The Government of Indus decided to set up "Covid Recovery Facilities" to provide medical care to those infected with the novel Coronavirus and set up one such Covid Recovery Facility in Badlapur, one of the States under the Union of Indus. the Government engaged a company called HealthONE which was tasked with ensuring an adequate supply of required medical infrastructures and consumables.
3. Mr. Thupden was a 50-year-old male suffering from type-2 diabetes, was infected with the Covid-19 virus and was eventually shifted to Covid Recovery Facility, Badlapur.
4. Unfortunately, the Covid Recovery Facility at Badlapur ran out of oxygen at midnight of July 7th, 2021; Thupden and seven others admitted to the Covid ward lost their lives due to the lack of oxygen supply.
5. He and seven others instituted a suit against the State and HealthONE before the Badlapur High Court seeking compensation of Rs. 10 crores on the grounds of medical negligence and failure to perform statutory duty by the State.
6. HealthONE has filed its written statement asserting that its role at best was that of a service provider and that liability has to be fastened solely on the Government. The State has contended that there was no negligence on the part of the State.
7. The case is posted for final hearing via video conference.

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STATEMENT OF ISSUES

***THE PLAINTIFF SUBMIT THE FOLLOWING ISSUES FOR CONSIDERATION IN THE
PRESENT CASE***

ISSUE 1: *WHETHER THE PETITION UNDER ARTICLE 226 IS MAINTAINABLE?*

ISSUE 2: *WHETHER THE STATE WAS PERFORMING A SOVEREIGN FUNCTION?*

ISSUE 3: *WHETHER THERE WAS NEGLIGENCE ON PART OF HEALTHONE?*

ISSUE 4: *WHETHER THE STATE WAS LIABLE FOR NEGLIGENCE?*

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SUMMARY OF ARGUMENTS

ISSUE 1: WHETHER THE PETITION UNDER ARTICLE 226 IS MAINTAINABLE?

It is respectfully submitted before this Hon'ble court that the petition filed by the Plaintiff is maintainable as the High Court can consider and grant compensation to the victim(s) who has suffered an infringement of fundamental right.

ISSUE 2: WHETHER THE STATE WAS PERFORMING A SOVEREIGN FUNCTION?

It is humbly submitted that the State was not performing a Sovereign Function. Since there was an infringement of fundamental right and act violating the fundamental right does not come under Sovereign Function. So, the defence of Sovereign Immunity is not applicable in the present case.

ISSUE 3: WHETHER THERE WAS NEGLIGENCE ON PART OF HEALTHONE?

It is humbly submitted that the HealthONE was liable for the negligence as they owe the Duty of care towards the Plaintiff. They failed to maintain the adequate supply of oxygen and can be held jointly liable for this wrong.

ISSUE 4: WHETHER THE STATE WAS LIABLE FOR NEGLIGENCE?

It is humbly submitted that the State was liable for negligence as they owe the duty of care towards the Plaintiff. Primary duty of the State was to secure the welfare of the people and also, they are Vicariously liable for HealthONE negligence.

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ARGUMENTS ADVANCED

It is humbly submitted that,

1. WHETHER THE PETITION UNDER ARTICLE 226 IS MAINTAINABLE?

It is respectfully submitted before this Hon'ble court that the suit filed by the Plaintiff is maintainable. There was an infringement of fundamental right and the State does not have the defence of Sovereign Function. HealthONE was negligent in maintaining the proper oxygen supply due to which casualty occurred. The Plaintiff, being aware of the above, has approached this court seeking relief.

1.1 Whether the High Court can consider and grant compensation to the victim(s) who has suffered an infringement of fundamental right?

1.1.1. It is humbly submitted that according to the Writ of Mandamus the high court has the power to order the state authority to do something that was their legal duty which they have failed to perform and there was a clear infringement of fundamental right. Even after been advised by the Top researchers and virologists that patients recovering from Covid-19 would need oxygen support on priority, State and HealthONE doesn't manage the oxygen supply due to which the Covid Recovery Facility at Badlapur ran out of oxygen on midnight of July 7th, 2021. Mr. Thupden and seven others lost their life due to negligence of the State and HealthONE which is an infringement of their fundamental right, i.e., Article 21¹ "*Protection*

¹ Indu Devi v. State of Bihar [2017] 14 SCC 525

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of Life and personal liberty”, of the Constitution of Indus. Maintaining the adequate supply of oxygen was the duty of HealthONE and the State, which they have failed to perform. The State contended that the second wave of the pandemic was not foreseeable but been advised by Top researchers and virologists about the oxygen need, this oxygen crisis was a foreseeable event.

1.1.2. In case of *Consumer Education & Research Centre v. Union of India*², it was held that “In public law claim for compensation is a remedy available under Article 32 or Article 226 for the enforcement and protection of fundamental and human rights. Defence of sovereign immunity is inapplicable.” In the present case, there is a violation of Article 21 which is part of a fundamental right guaranteed by the Constitution of Indus. Hence, the State cannot take the defence of Sovereign immunity and the High Court of Badlapur has the jurisdiction to hear this matter.

1.1.3. The Court in *Nitin Aryan v. State of Chhattisgarh*³, held that “Right to life is a fundamental right guaranteed under Article 21 of the Constitution of Indus and for its breach or violation, the petitioner is entitled to monetary compensation from the respondents who are responsible for its breach”. The Court also observed that “in the exercise of jurisdiction under Article 226 of the Constitution of India, Court can consider and grant compensation to the victim(s) who has suffered an infringement of fundamental right, i.e., right to life and personal liberty guaranteed under Article 21 of the Constitution of India”. In the present case, the plaintiff is entitled to monetary compensation from the defendants for the breach of Article 21.

² Consumer Education & Research Centre v. Union of India [1995] 3 SCC 42

³ Nitin Aryan v. State of Chhattisgarh [2021] SCC OnLine Chh 1636

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1.1.4. In the case of *Ramjan v. State of Rajasthan*⁴, the court held that, “Where the state has failed to protect the fundamental rights guaranteed under Article 21, i.e., right to life, writ is also proper remedy and the State cannot be allowed to take defence of filing Civil suit for compensation against private person who caused injury. State is liable to provide free full medical aid and compensation as per new horizons of constitutional tort”. State failed to protect the life of Mr. Thupden and seven others which means that the Article 21 is been violated in the present case. Hence, the respondents are liable to compensate the plaintiff.

Therefore, it is humbly submitted that the petition under Article 226 is maintainable in the Hon’ble High Court of Badlapur and the Hon’ble Court has the jurisdiction to consider and grant compensation in this matter.

⁴ Ramjan v. State of Rajasthan [2008] SCC OnLine Raj 587

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2. WHETHER THE STATE WAS PERFORMING A SOVEREIGN FUNCTION?

It is humbly submitted before the Hon'ble Court that, the State in the present matter was not performing a Sovereign Function as where there is an infringement of fundamental right, the State cannot claim its Sovereign Immunity. The Plaintiff would like to submit the following arguments for affirming the same.

Article 300⁵

The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament⁶ or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

2.1 Whether the act which infringes the fundamental right comes under Sovereign Function?

2.1.1. It is humbly submitted that the state does not have a sovereign immunity as there is an infringement of fundamental right and the act which infringes the fundamental right does not come under Sovereign Function.

⁵ Rajiv Sarin v. State of Uttarakhand [2011] 8 SCC 708

⁶ Kalpana Mehta v. Union of India, [2018] 7 SCC 1

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2.1.2. In the case of *State of A.P. v. Challa Ramkrishna Reddy*⁷, the court held that “The fundamental rights, which also include basic human rights cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign acts which has been rejected several times by the Supreme Court.” Right to Life comes under Article 21 which is the part of fundamental rights guaranteed by the Constitution of India and in the present case, right to life has been violated. Hence, for the violation of fundamental right the State cannot claim the Sovereign Immunity.

2.1.3. The court in the landmark case of *Nilabati Behera v. State of Orissa*⁸, held that “The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts 32 and 226.” Where there is infringement of fundamental rights there is no defence of sovereign immunity available. Similarly, in the present matter, right to life has been infringed. Hence, the State does not have a defence of Sovereign Immunity.

Therefore, it is humbly submitted that the State is not performing a Sovereign Function.

So, the defence of Sovereign Immunity is not applicable in the present case.

⁷State of A.P. v. Challa Ramkrishna Reddy [2000] 5 SCC 712

⁸Nilabati Behera v. State of Orissa [1993] 2 SCC 746

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3. WHETHER THERE WAS NEGLIGENCE ON PART OF HEALTHONE?

It is humbly submitted before the Hon'ble Court that there is the negligence on part of HealthONE as they failed to maintain the adequate supply of oxygen due to which Mr. Thupden and Seven others lost their life.

3.1 Duty of Care

3.1.1 It is humbly submitted that the HealthONE owes the duty of care towards the plaintiff. The court in the case of *Parmanand Katara v. Union of India*⁹, held that “every health professional whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State can intervene to avoid the discharge of the paramount obligation cast upon members of the medical profession.” In the present case, HealthONE being the health professional, has the professional obligation to extend his services with due expertise for protecting life.

3.1.2. In the case of *Ramesh Kumar Nayak v. Union of India*¹⁰, the post authorities failed to maintain the compound wall of a post office in good condition, on the collapse of which the petitioner sustained injuries. The respondent contended that it was due to the natural calamity but the Court held that “postal authorities were liable since they that had a duty to maintain the post office premises and due to their breach of duty to do so, the collapse occurred. Hence, they were liable to pay compensation.” Similarly, in the present case, HealthONE has the duty to

⁹ Parmanand Katara v. Union of India [1989] 4 SCC 286

¹⁰ Ramesh Kumar Nayak v. Union of India [1994] SCC OnLine Ori 33

maintain the oxygen supply and due to their breach of duty, Covid Recovery Facility, Badlapur ran out of oxygen and Mr. Thupden and seven others lost their lives.

3.1.3. In the case of *Indian Medical Assn. v. V.P. Shantha*¹¹, it was held that “professionals in case of their failure to take reasonable skill and care, they cannot claim any immunity from such liability on the ground that they are subject to disciplinary control under Medical Council Act.” Similarly in the present case, HealthONE cannot claim any immunity from such liability on the ground that they are subject to disciplinary control under the State.

3.1.4. In the case of *Laxman Balkrishna Joshi v. Trimbak Babu Godbole*¹², it was held that “The duties which a doctor owes to his patient are clear A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz a duty of care in deciding whether to undertake the case a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient.” HealthONE holds himself out ready to give oxygen supply, owes duty of care towards the plaintiff. Hence, breach of duty of care amounts to negligence by HealthONE.

3.2 Joint Liability

3.2.1 It is humbly submitted that the State and HealthONE are jointly liable. Since, the state is vicariously liable for the negligence of HealthONE but the plaintiff has a choice to sue anyone of them, some of them or all of them, in an action.

¹¹ Indian Medical Assn. v. V.P. Shantha [1995] 6 SCC 651

¹² Laxman Balkrishna Joshi v. Trimbak Babu Godbole [1969] 1 SCR 206

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3.2.2 In *Jai Singh v. Mansa Ram*¹³, it was held that “Where the plaintiff elects to bring an action against all of them jointly, judgment obtained against all of them may be executed in full against any of them. In the present suit, plaintiff filed the suit against both the State and the HealthONE. Hence, both will be jointly liable.

Therefore, it is humbly submitted that the HealthONE is liable for the negligence as they owe the Duty of care towards the Plaintiff and can be held jointly liable for this wrong.

¹³ Jai Singh v. Mansa Ram [1963] SCC OnLine HP 11

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4. WHETHER THE STATE WAS LIABLE FOR NEGLIGENCE?

It is humbly submitted before the Hon'ble Court that the State is liable for negligence as the primary duty of the State is to secure the welfare of the people as well as the State will be held Vicariously liable for the negligence of HealthONE.

4.1 Vicarious Liability

4.1.1 It is humbly submitted that the state is vicariously liable for the negligence of HealthONE. In the case of *State of Haryana v. Santra*¹⁴, it was held that “The doctor as also the State must be held responsible in damages if the sterilisation operation performed by him is a failure on account of his negligence. The vicarious liability of the State for the negligence of its officers in performing the sterilisation operation should be seen keeping in view the law settled by the Supreme Court.” Similarly, in the present case HealthONE is working for the State and the State will be vicariously liable for the negligence of Healthone.

4.1.2 In the case of *State of Maharashtra v. Kanchanmala Vijaysing Shirke*¹⁵, it was held that “It is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some case, it can be found that an employee was doing an authorised act in an unauthorised but not a prohibited way.” In the present case, state will be held liable for the negligence of HealthONE even though the act was done in an unauthorised way but done in the course of his employment.

¹⁴ State of Haryana v. Santra [2000] 5 SCC 182

¹⁵ State of Maharashtra v. Kanchanmala Vijaysing Shirke [1995] 5 SCC 659

4.2 State has the duty of Care and cannot avoid its Duty

4.2.1 It is humbly submitted that the State has the duty of care towards the plaintiff and cannot avoid it as the primary duty of the State is to secure the welfare of the people. The court in the case of *Paschim Banga Khet Mazdoor Samity v. State of W.B.*¹⁶, held that “Constitution envisages the establishment of a welfare State at the federal level as well as at the State level and that the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person.” In the present case, State contended that due to Epidemic, there is lack of oxygen but providing adequate medical facilities for the people is an essential part of the obligations undertaken by the State. Hence, the State cannot escape from the Liability.

4.2.2. In *Roshan Mathias v. State of Goa*¹⁷, the Court held that, “Right to life is a fundamental right guaranteed by Article 21 of the Constitution. There is, therefore, a corresponding duty cast on the State to ensure that this life is not extinguished on account of inability on the part of the State to supply oxygen to these unfortunate victims of the pandemic. The duty of state can neither be avoided by pleading helplessness nor by putting forth logistical difficulties in sourcing and supplying oxygen.” In the present case, the State having the duty of care¹⁸ towards the plaintiff cannot escape from the liability by stating Epidemic as an excuse.

¹⁶Paschim Banga Khet Mazdoor Samity v. State of W.B. [1996] 4 SCC 37

¹⁷ Roshan Mathias v. State of Goa [2021] SCC OnLine Bom 708

¹⁸ Maneka Gandhi v. Union of India, [1978] 1 SCC 248

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4.2.3. In the case of *D.K. Basu v. State of W.B.*¹⁹, the court held that “The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim. Civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen.” Similarly, in the present matter, State had to compensate for the infringement of right to life.

Therefore, it is humbly submitted that the State is liable for negligence as they owe the duty of care towards the Plaintiff and also, they are Vicariously liable for HealthONE negligence.

¹⁹ D.K. Basu v. State of W.B. [1997] 1 SCC 416

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PRAYER

It is humbly submitted that, in the light of the issues raised, arguments advanced and authorities cited it is most humbly prayed and implored before the Hon'ble Court, that it may be graciously be pleased to adjudge and declare that:

1. HealthONE owes the duty of care towards the plaintiff and has failed to fulfil his duty to maintain the Oxygen Supply.
2. HealthONE and the State are liable for the negligence and thus the compensation of Rs. 10 crores should be granted to the Plaintiff.

And pass any other such order(s) in favour of the Plaintiff and against the Defendants as may be deemed fit and proper by this Hon'ble Court in the interest of Justice and Equity. For this act of kindness, the Plaintiff shall duty bound forever pray.

Respectfully submitted,

Sd/-

(Counsel for the Plaintiff)

