

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

OP (FC).No. 485 of 2015 (R)

**(ARISING FROM I.A. No.5867/2014 IN OP No.1218/2014
OF FAMILY COURT, THRISSUR)**

PETITIONER:

**ULLAS,
S/O.BHASKARAN,
VILLAKAPPADI HOUSE, KIZHAKKUMMURY DESOM
PERINGOTTUKARA VILLAGE, THRISSUR TALUK**

BY ADV. SRI.MAHESH V.MENON

RESPONDENTS:

- 1. RESMI
D/O.SANKARAN,
PERAMANGALATH HOUSE,
MARATHAKARADESOM, OLLUR VILLAGE
THRISSUR TALUK REPRESENTEDBY HER FATHER SANKARAN
PERAMANGALATH HOUSE, MARATHAKARA DESOM,
OLLUR VILLAGE, THRISSUR TALUK.680 306.**
- 2. SANKARAN
PERAMANGALATH HOUSE, MARATHAKARA DESOM,
OLLUR VILLAGE, THRISSUR TALUK. 680 306.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 14-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF PRESCRIPTIONS ISSUED BY THE PSYCHIATRIST.

**EXT.P-2: TRUE COPY OF OP NO.1218/2015 BEFORE THE FAMILY COURT,
THRISSUR.**

**EXT.P-3: TRUE COPY OF IA NO.5867/2014 IN OP NO.1218/2014 BEFORE THE
FAMILY COURT, THRISSUR.**

**EXT.P-4: TRUE COPY OF ORDER IN IA NO.5867/2014 IN OP NO.1218/2014 OF
THE FAMILY COURT, THRISSUR.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

O.P (FC) No. 485 OF 2015

DATED THIS THE 14th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The 1st respondent herein is the wife of the petitioner and the 2nd respondent is her father. Marriage between the petitioner and the 1st respondent was solemnized on 20-01-2007. There is a child born out of the wedlock. Subsequently, due to some matrimonial discord the 1st respondent left the house of the petitioner, during June 2014. The petitioner had approached the Family Court, Thrissur in OP No.1218/2014 seeking nullity of the marriage, on the allegation that the 1st respondent was suffering from mental illness and that the marriage was solemnized by suppression of such facts. An alternate relief was sought for to dissolve the marriage, based on alleged cruelty on the part of the 1st respondent.

2. Along with the original petition, the petitioner had filed I.A No. 5867/2014 to appoint the 2nd respondent as guardian of the 1st respondent to represent her in the proceeding, on the premise that the 1st respondent is not mentally fit and capable of understanding the proceedings and in adducing evidence in the case. Exhibit P3 is the copy of the said interim application. But the said application was dismissed by the Family Court through Ext.P4 order, finding that on the basis of the enquiry conducted and interaction made with the 1st respondent it was convinced that the 1st respondent is capable of understanding the proceedings of the case, and there is no necessity for appointment of a guardian. It is aggrieved by dismissal of I.A. No.5867/2014, this original petition is filed invoking the supervisory jurisdiction vested under Article 227 of the Constitution of India.

3. Contention of the petitioner is that the impugned decision was taken merely based on an interaction with the 1st respondent, which is not legal and proper. It is

contended that, a decision as to whether the 1st respondent is capable of protecting her interest or not, by reason of her mental infirmity, ought have been taken on the basis of an expert opinion, for which the court ought to have referred the 1st respondent to any expert. The court below had omitted notice of the serious averments contained in the original petition, attributing mental illness against the 1st respondent. Further contention is that, dismissal of interim application for appointment of guardian for conducting the case on behalf of the 1st respondent, may cause prejudice to the petitioner herein, if it is ultimately found that the 1st respondent was suffering from mental illness. An apprehension is raised that, in such case the decree which may be passed by the court may be rendered as a nullity, because of the fact that no guardian was appointed with respect to the 1st respondent.

4. Under Rule 15 of Order XXXII of Code of Civil Procedure it is provided that, provisions contained in Rule 1 to 14 of the said order with respect to appointment of

guardian or next friend shall also apply in the case of a person adjudged before or during pendency of a suit to be of unsound mind. It further provides that, it shall also apply to a person, though not so adjudged, if found by the court on enquiry to be incapable by reason of any mental infirmity of protecting his interest when suing or being sued. In the case at hand, the allegation is that the 1st respondent is not capable of protecting her interest in the case instituted against her before the Family Court, because of her mental infirmity. When such an allegation is made by the petitioner and when Rule 15 invoked seeking for appointment of a guardian, it is the duty of the court to conduct an enquiry as to whether she is incapable of protecting her interest, when being sued. Evidently, the court by way of an enquiry had interacted with the respondent and found that the 1st respondent is capable of understanding the proceedings.

5. What should be the scope of the enquiry contemplated under Rule 15 was elaborately considered in a decision of this court in **Raveendran V. Sobhana and**

another (2008 (1) KHC 607) = (2008 (1) KLT 488) His Lordship Justice Kurian Joseph, as he was then, speaking for the Bench observed that, the inquisition as per the procedure under the Lunacy Act (Mental Health Act, at present) is not required while dealing with persons suffering from mental infirmity. A person who is not adjudged as one of unsound mind under the Lunacy Act, is still entitled to the protection under Order XXXII Rule 15, if the court is satisfied that the person is incapable of protecting his interests either by reason of unsoundness of mind or intellectual incompetence due to mental infirmity. The scope of enquiry under Order XXXII Rule 15 is the assessment of the capability of a person either of unsound mind or suffering from any mental infirmity as to whether such defects or infirmity, would render a person incapable of communicating his views, wishes or thoughts. Referring to an earlier decision of this court in **Kunhamma V. Rosakutty (1997 (1) KLT 33)** it is found that, eventhough the court is not to make an elaborate and detailed enquiry

with regard to sanity or otherwise of a person, who is alleged to be incapable of looking after his own affairs, under Order XXXII Rule 15 of Code of Civil Procedure the scope and ambit of the enquiry is the satisfaction of the court as to whether the person is in fact incapable of looking after his affairs. The enquiry should be a judicial enquiry to enable the court to come to a satisfactory conclusion as to the mental condition of the party concerned. In **Raveendran's case** (supra) the court observed that, if that person is not capable of protecting his interest on his own, the court has an obligation to protect his interests by appointing a next friend and if such person is capable of protecting his own interests, the court has an equal obligation to see that a next friend or guardian is not superimposed on him, thereby depriving him of his rights to take his own decisions. Referring to a decision reported in **S.C. Karayalar V. V. Karayalar (1968 MLJ 150)** it is observed that, holding an enquiry under Order XXXII Rule 15 "is thus inescapable and consent cannot vest jurisdiction

in court to dislodge or divest the right of a litigant to conduct his suit by superimposing a guardian or a next friend.”

6. From the principles underlying in the decisions referred as above, it is evident that the court should make an enquiry under Order XXXII Rule 15 in order to arrive at a conclusion as to whether appointment of a guardian is required or necessary to protect interest of a person who is not capable of his own in protecting his interest. If it is found during such enquiry that, the person concerned is capable of protecting his interest of his own, no guardian or next friend shall be superimposed on him by depriving him of his rights to take his own decisions. Therefore if the court becomes satisfied that the party concerned is capable of protecting his or her interest by himself or herself, there is no requirement of getting opinion of an expert, in order to arrive at a conclusion. Such expert opinion may be required only in case where the court by itself could not arrive at a conclusion, after making such enquiry. But in the case at

hand, the court was fully satisfied that the 1st respondent is capable of protecting her interest, based on the enquiry conducted, which is in the form of interaction with the 1st respondent. The petitioner under such circumstances cannot raise a contention that the court should be compelled to refer the 1st respondent for getting an expert opinion. Such a procedure is not contemplated within the ambit and scope of Order XXXII Rule 15.

7. Learned counsel for the petitioner raised a further argument that, after declining appointment of guardian under Order XXXII Rule 15, if it is finally adjudged that the 1st respondent is suffering from mental illness, the petitioner may be prejudiced, because the respondent may plead that the decree will be a nullity, based on non-appointment of a guardian in the proceedings. Such a legal proposition is not acceptable. Probably such a situation may arise in a case where a minor is sued against without seeking for appointment of a next friend or guardian. But in the case of a person attained majority, if the court after

making an enquiry found that such person is capable of protecting his/her interest, any decree which may be passed based on finding of his or her mental illness could not be nullified based on an allegation of non-appointment of guardian.

8. Learned counsel had raised an apprehension on the basis of an observation contained in **Raveendran's case** (supra), which is made referring to a decision of the hon'ble Supreme Court in **Ram Chandra Arya V. Man Singh and another (AIR 1968 SC 954)**. In the said decision the hon'ble Supreme Court observed that, a decree may become a nullity if the defendant was a lunatic at the time of institution of the suit and when the suit was instituted and conducted without appointment of a guardian-ad-litem. Such a situation will not arise in the case where the plaintiff have sought for appointment of a guardian by invoking under Order XXXII Rule 15, after the court found that a person is capable of protecting his/her interest even without appointment of a guardian.

9. However, we make it clear that the dismissal of the application under Order XXXII Rule 15 by virtue of the impugned order will not in any manner stand in the way of the petitioner adducing proper evidence before the Family Court with respect to the alleged mental illness of the 1st respondent and to prove the same. If any such evidence is adduced the case shall be adjudicated by the Family Court independently on evaluating such evidence, uninfluenced by the decision rendered in IA No.5867/2015.

10. Under the above mentioned circumstances this court is of the opinion that the challenge against Ext.P4 cannot succeed. Consequently the original petition is hereby dismissed, subject to observations made as above.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge