

**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.5856 of 2015

Date of Decision: September 08, 2015

Sunder Lal and another

.... Petitioners

vs.

Satish Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Gaurav Sethi, Advocate for the petitioners.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes*
- 2. To be referred to the Reporters or not? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 09.07.2015 passed by learned Civil Judge (Jr. Divn.), Ambala, vide which the application filed by petitioner No.1 for granting him permission to contest the case on behalf of petitioner no.2 Brij Lal (deaf and dumb) as next friend/guardian ad-litem, was dismissed.

The short controversy is that defendant No.1(petitioner No.2 herein) is deaf and dumb by birth and he is stated to be declared 100% disabled by the doctors at Civil Hospital, Ambala. A suit for permanent injunction has been filed against said Brij Lal-defendant No.1 in which present petitioner No.1 filed the present application, which was dismissed.

The contention of learned counsel for the petitioners is that defendant No.1 being deaf and dumb is unable to communicate

and, therefore, is to be treated at par with a person of unsound man and a person, who is incapable of protecting his interest by reason of any mental infirmity.

Order XXXII, Rule 15 CPC, which relates to suit against minors and persons of unsound mind, which is reproduced as under:

“ 15. Rules 1 to 14 (except rule 2-A) to apply to persons of unsound mind-Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.”

A perusal of the said Rule shows that it talks about mental incapacity.

It is not necessary that a deaf and dumb person is mentally incapable also. The hardship in communication is one thing and the mental incapacity is different thing. The title of the suit shows that said Brij Lal (deaf and dumb) is running business of book binding. If he can run a business of book binding, then it cannot be said that he is mentally infirm.

There is nothing on the file to show that Brij Lal was ever taken to mental asylum. Nor there is any medical certificate that he is mentally insane or incapable of protecting his interest.

Learned counsel for the petitioners had referred to the authority of ***“Nanak Chand and others vs Banarsi Das and others”, A.I.R. 1930 Lahore, 425 and “Amulya Ratan Mukherjee vs Sm. Kanak Nalini Ghose and others”, AIR 1954 Mad 810.***

The lower court has observed that defendant No.1-Brij Lal in this case has engaged his counsel and there is nothing on file to show that he being deaf and dumb is mentally infirm also.

It being so, no fault can be found with the impugned order, in refusing to appoint petitioner No.1 as next friend/guardian ad-litem of defendant No.1 (petitioner no.2 herein).

However, if during proceedings lower court entertains any doubt about the mental capacity of Brij Lal, then it shall always be open to the trial Court to find out whether defendant No.1-Brij Lal is mentally incapable for protecting his interest and if the Court at any stage finds as such, then without being influenced by the order of this Court, the lower court is at liberty to appoint the next friend/guardian ad-litem on behalf of Brij Lal.

Accordingly, the present revision petition stands dismissed.

September 08, 2015
sarita

(KULDIP SINGH)
JUDGE