

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.02 of 2016**

Pankaj Soni, S/o. Mahesh Kumar Soni, Aged about 29 years, R/o. Village Kharod, post Kharod, Police Station Shivrinarayan District Janjgir Champa (CG)

---- **Petitioner****Versus**

Smt. Neha Soni, D/o. Santosh Soni, W/o. Pankaj Soni, Aged about 21 years, present R/o. Quarter No. MQ-1292, Pragati Nagar, Deepika, Police Station Deepika, District Korba (CG)

---- **Respondents**

Shri Upendra Bharat, counsel for the petitioner.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17.02.2016.**

Heard on admission and also on maintainability of the instant petition.

2. The facts in brief required for the instant writ petition is that the petitioner has filed an application before Judge family Court under Sections 11 & 12(C) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') against the respondent which is pending as No.135A/2013. During trial, the petitioner/applicant filed an application under Order 32 Rule 3 of the Code of Civil Procedure, 1903 (for short 'the CPC') for appointment of guardian ad litem wherein it is alleged that the said petition was filed against the non applicant as she is a mental patient, hence the marriage may be held as void. It is submitted that the non applicant is suffering from paranoid schizophrenia and epilepsy, she is unable to think and understand like a healthy person, hence on behalf of the non

applicant her father may be appointed as guardian ad litem. On the other hand, non applicant filed elaborate reply by denying the fact that she is under the ailment of paranoid schizophrenia and epilepsy and prayed that the application filed in this behalf may be dismissed. After hearing both the parties, the court below observed that the non applicant is regularly appearing and taking part in the proceedings since 02.5.2014, hence the application filed under Order 32 Rule 3 of the CPC for the appointment of the guardian ad litem is liable to be dismissed. Thereby the court below dismissed the application. Against the said order, the applicant/petitioner filed the instant petition wherein he has taken the ground that order passed by the Court below is bad in law in the facts of the case as the non applicant is not in a position to defend herself on account of her ailment, appointment of guardian ad litem is necessary for the proper adjudication of the matter. The respondent admitted that she was treated for depression by two doctors. The trial Court failed to appreciate the evidence of the doctors who have stated that the respondent is suffering from paranoid schizophrenia and epilepsy, hence appointment of guardian ad litem is necessary. The said doctor was examined on behalf of the applicant. As per the provisions of Order 32 of the Code clearly provides that in case of unsound mind the court is required to appoint guardian as per the provisions of the Code. Hence, it is submitted on behalf of the petitioner that the petition may be allowed and order dated 04.11.2015 passed by the court

below regarding the prayer as made in the application filed under Order 32 Rule 3 read with Rule 15 of the Code be set aside.

3. Heard learned counsel for the petitioner.

4. Learned counsel for the petitioner supported the entire ground taken in the petition and submits that as per the evidence of both the doctors examined on behalf of the petitioner to prove his case, the provisions of law and facts, the petition may be allowed and relief as prayed may be granted.

5. In order to support the arguments advanced, learned counsel placed reliance on **(2009) 5 SCC 694, State of Assam vs. Barak Upatyaka D.U. Karmachari Sanstha** wherein Hon'ble Apex Court in para 21 & 22 held as under:

"21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as *ratio decidendi*. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing.

22. The observations and direction in **Kapila Hingorani (I) vs. State of Bihar, (2003) 6 SCC 1** and **Kapila Hingorani (II) vs. State of Bihar (2005) 2 SCC 262** being interim directions based tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non payment of salaries to the employees of a large number of public sector undertakings for several years, have no

value as precedents. The interim directions were also clearly in exercise of extraordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extent hardship, approaching this Court or the High Court alleging human rights violations and seeking a mandamus requiring the State, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of *Kapila Hingorani(I)* and *Kapila Hingorani (II)*.

6. He further placed reliance on **2003 (1) CGLJ 332 Kasturi Bai & Ors. vs. Anguri Chaudhary**, wherein the Hon'ble Apex Court while setting aside the order the High Court directed the trial Court to hold an inquiry as to whether the respondent herein was incapable of protecting her interest by reason of any mental infirmity, such inquiry is mandatory. It is submitted on behalf of the petitioner that in the present case order of enquiry is a mandatory which was not ordered, hence the cited case law is applicable in the matter.

7. In order to appreciate the arguments advanced in this behalf, the petition and the documents annexed are perused.

8. On close scrutiny of the matter, it appears that by filing the application under Sections 11 & 12 (1)(c) of the Act, 1955 it is alleged that since the non applicant is suffering from paranoid schizophrenia and epilepsy, as per the settled law, the petitioner

is required to prove his pleadings for appropriate relief under Sections 11 & 12 of the Act, 1955.

9. On perusal of the order sheet dated 04.11.2015, the court below held that the non applicant is continuously appearing and taking part in the proceedings since 02.5.2014 and also otherwise non applicant is contesting the said matter. The trial Court also observed that the non applicant had filed a detailed application denying that she is suffering from the ailment as alleged and prayed that the application may be dismissed.

10. On perusal of the case law cited, Kasturi (supra), it appears that the matter is in relation with a civil suit filed for partition and possession wherein non-applicant No.1 was an old lady aged about 87 years and she has developed forgetfulness. In the said case, the Hon'ble Supreme Court held for the enquiry as under Order 32 Rule 15 of the Code. On the other hand, in the present matter, the basis for appointment of guardian ad litem is also for the basis for the suit filed against the non applicant. Though the order for any inquiry would be an interim order and it shall not finally and conclusively decides the issue and cannot be as precedence. But for the present case, issue of the appointment of guardian ad litem and the entire issue of the matter are common. As the petitioner is required to prove his case naturally under that process he has examined two doctors. On the other hand, on behalf of the respondent they were cross examined, the respondent in turn made examination of her witness to disprove

and prove as the burden lies on her that she is not suffering from the above ailment. It will not be proper to appreciate the facts mentioned by the applicant/witness those examined on behalf of the applicant for the purpose of proving the case as prayed. On the other hand, even the non applicant is continuously taking part in the matter to defend the case, filed elaborate reply and taking part in the proceedings, with this, in the considered view of this Court, both the cited case law are not applicable in the present matter. Looking to the pleadings of the petition in the matter of concern the appointment of the guardian ad litem may not be considered as she is taking part in the hearing by her own duly defending herself and she had opportunity to prove by defend herself that she is not under the ailment of the paranoid schizophrenia and epilepsy .

11. In the considered view of this Court, the court below has not committed any procedural error so far as the facts of the case are concerned. This court does not want to use the jurisdiction under Article 227 of the Constitution of Indian for any interference in the said order. In view of the above, the petition is not maintainable and it is dismissed accordingly at the admission stage itself.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**