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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 29.08.2016

+ CM(M) 835/2016

KRISHAN MANCHANDA Petitioner

Through Mr. R.K. Sahni, Advocate.

versus

GOVT OF NCT OF DELHI & ORS Respondents

Through Mr. Rajat Malhotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No. 31210-31211/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 835/2016 and 31209/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 16.05.2016 appointing Mr. Sanjay Sindhani as the guardian/next friend to represent Ms. Pooja Pahuja in the probate proceedings.
2. The petition for probate was filed for the Will of late Sh. Dhalu Ram Pahuja. Ms. Pooja Pahuja, the daughter of the testator has been impleaded as respondent in the petition. The admitted case of the petitioner is that on account of the mental condition of Ms. Pooja Pahuja, she is not in a position to defend the petition herself. The mother of Ms. Pooja Pahuja, namely, Smt. Subhagwanti Pahuja who was also a respondent in the petition and was appointed as next friend of Ms. Pooja Pahuja expired on 16.08.2015.
3. The petitioner who is the sole objector to the petition, Sh. Kishan

Manchanda filed the present application under Order 32 Rule 15 CPC for his appointment as guardian/next friend of Ms. Pooja Pahuja who is stated to be mentally challenged. Another application was filed by Mr.Sanjay Sindhani for his appointment as guardian/next friend of Ms. Pooja Pahuja. Mr.Sanjay Sindhani is said to be a cousin of Ms. Pooja Pahuja.

4. It was the contention of the petitioner before the trial court that he is the legally wedded husband of Ms. Pooja Pahuja and that he may be appointed as guardian/next friend in the present probate petition.

5. It was the contention of the respondent that the marriage of Mr.Kishan Manchanda/petitioner and Ms. Pooja Pahuja had already been dissolved as the matter was settled before the Mediation Centre. It was urged that the only objective of the petitioner to file the present application was to grab the property left behind by the parents of Ms. Pooja Pahuja.

6. The trial court noted that as per the memorandum of understanding dated 28.12.2012, the marriage was solemnised between the petitioner and Ms.Pooja Pahuja on the understanding that after the marriage, the petitioner shall live with his wife at her parental house in Ashok Nagar. It was agreed that the petitioner/objector shall be settled in the business of the father of Ms.Pooja Pahuja at D-5, Fateh Nagar, New Delhi. The trial court also noted that the petitioner had been extorting money from the parents of Ms. Pooja Pahuja. The trial court has noted that there were two respondents in the probate petition, namely, the deceased Smt. Subhagwanti Pahuja and Ms.Pooja Pahuja. Ms. Subhagwanti Pahuja, the mother of Ms. Pooja Pahuja has also left a Will. Now, Ms. Pooja Pahuja is the only legal heir of the deceased couple. It is also noted by the trial court that the petition for divorce has been filed under the Hindu Marriage Act by the mother

Smt.Subhagwanti Pahuja acting as a next friend which is said to be still pending before the family court. The matter was settled and the petitioner agreed to dissolve the marriage. As per the settlement, the mother of Ms. Pooja Pahuja had agreed to pay Rs.48 lacs in three instalments to the petitioner out of which Rs.5 lacs had been paid. Further, as per the Will of Ms.Subhagwanti, the mother, three persons including Mr.Sanjay Sindhani have been appointed as next friend for the care and custody of Ms.Pooja Pahuja. In these circumstances, the trial court accepted the application of Ms. Sanjay Sindhani to represent Ms. Pooja Pahuja in the present petition. The application of the petitioner was dismissed.

7. Learned counsel appearing for the petitioner has made two submissions. He firstly submits that under Order 32 Rule 15 CPC, an enquiry was mandatory before taking any further steps which enquiry has not been conducted. He relies upon the judgment of this court in the case of ***Shanta Chopra vs. Uma Bahadur, 202 (2013) DLT 501***. He secondly submits that Smt. Subhagwanti Pahuja, the mother has via a Will dated 20.12.2012 bequeathed an immovable property in favour of Mr. Sanjay Sindhani. The said property is Flat No. B-7, Divya Apartment, Sector 10, Dwarka, New Delhi. He submits that the said person being an interested person is not entitled to be appointed as a next friend of Ms. Pooja Pahuja. He prays that either the petitioner be appointed as next friend or any other independent person be so appointed.

8. As far as the Order 32 Rule 15 CPC is concerned, the same states that Order 32 Rules 1 to 14 shall apply to a person adjudged to be of unsound mind or found by the court on enquiry that the person is incapable by reason of mental infirmity of protecting his interest when suing or being sued. This

court in the case of *Shanta Chopra vs. Uma Bahadur (supra)* had stated that it was the duty of the court at the first instance to embark upon an enquiry to ascertain if indeed the plaintiff/party is of unsound mind and whether next friend should be appointed as guardian ad litem of the person. The procedure under Order 32 Rule 15 CPC was said to be mandatory.

9. In the present case, the admitted case is that Ms. Pooja Pahuja is mentally challenged and she is not in a condition to protect the probate petition herself. Earlier also the trial court had during pendency of the petition appointed her mother as the guardian/next friend. The two objectors also state that Ms.Pooja Pahuja is not in a condition to protect the present petition. Accordingly, in my opinion, the provision of Order 32 Rule 15 CPC stands complied with.

10. As far as the submission of the learned counsel for the petitioner for appointment of a third person is concerned, a perusal of the petition shows that no such prayer was made before the trial court. In fact, there the petitioner only sought himself to be appointed as a next friend.

11. Late Shri Dhala Ram Pahuja was survived by only two natural heirs i.e. his widow Mrs.Subhagwanti and his daughter Ms.Pooja Pahuja. Hence only these two persons were impleaded as respondents. The petitioner is the only objector to the petition. It is clear that the conduct of the petitioner shows lack of bona fide. There are no grounds to appoint the petitioner as next friend of Ms.Pooja Pahuja in the noted facts and circumstances.

12. There is no merit in the present petition and the same is dismissed.

JAYANT NATH, J

AUGUST 29, 2016/rb