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

+ TEST.CAS. 115/2014

RADHIKA KAPOOR

..... Petitioner

Through: Mr. Vikas Arora, Advocate with
Ms. Radhika Arora, Mr. Mohit Taneja,
Mr. Abhishek Verma and Mr. Kunal Yadav,
Advocates alongwith petitioner in person.

versus

STATE & ORS

..... Respondents

Through: Mr. Samit Khosla, Advocate for R-2
with R-2 in person.
Respondent No.3 in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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12.07.2016

I.A. 6124/2016 (by the petitioner u/O XXXII Rule 3 CPC)

1. The present application has been filed by the petitioner praying *inter alia* that she be appointed as a guardian *ad litem* of her husband, respondent No.3.
2. Counsel for the petitioner states that the respondent No.3 had suffered a serious road accident in the year 1999, which had caused severe damage to his brain. A copy of the medical examination report of the respondent No.3 undertaken by a panel of doctors appointed by the Medical Superintendent, Lok Nayak Hospital, New Delhi dated 01.07.2004, is on record wherein the Board had recommended that the respondent No.3's speech and language

functions were severely affected which had caused him 100% disability with 25% disability in the lower limbs. Learned counsel submits that the petitioner being the wife of the respondent No.3, has been looking after him and attending to his daily needs over the years and he continues to remain in her care and custody. He states that the petitioner and the respondent No.3 have two daughters; the elder one is already married and the younger one is studying law in Bangalore and it is the petitioner, who has been taking care of all the needs of her children and bearing all the expenses for their upbringing and education. It is in this background that the present application has been filed for permission to appoint the petitioner as the guardian *ad litem* of the respondent No.3, on the ground that he is not capable of securing his affairs and her interest does not clash with that of her husband, in any manner.

3. To start with, it is considered essential to examine the scope of the relevant provision of the CPC, namely, Order XXXII entitled “Suits By or Against Minors And Persons of Unsound Mind” which lays down the procedure to be adopted in a suit filed by or against minors and persons of unsound mind. In the facts of the present case, Order XXXII Rule 15 CPC would be relevant for consideration and is extracted below :

“15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind – Rules 1 to 14 (except rule 2A) 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 used.”

4. On a bare reading of the aforesaid provision, it is quite evident that the court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind and further, the court is entitled to apply the said provision to a person who is not adjudged of unsound mind but on inquiry, found to be incapable of protecting his interest while suing or being sued on account of suffering from any mental infirmity. The aforesaid provision casts a solemn duty on the court to conduct an enquiry to assess the ability of a party to the proceedings who it is stated, is incapable of protecting his interest before passing any orders on an application seeking appointment of a guardian *ad litem*.

5. To understand as to who can be termed mentally infirm, a reference to the definition of the word 'infirm' which finds mention in several dictionaries is apposite. In Collins, the word 'infirm' has been defined as 'weak or ill and usually old'. The Concise Oxford Dictionary refers to the word 'infirm' as 'a person who is not physically strong, especially due to age'. In Black's Law Dictionary, the word 'infirm' has been defined as 'weak, feeble, lacking moral character or weak of health'. In Webster's New World Law Dictionary, the word, 'infirm' has been defined as "Debility caused by ill health or advanced age". The American Heritage Dictionary of the English Language defines 'infirmity' as "the condition of being infirm, often as associated with old age; weakness or frailty; the infirmity brought on by the disease".

6. There are several decisions of the Supreme Court as also the High Courts, where the principles relating to the scope of inquiry under Order XXXII CPC and the duty cast on the court to conduct an inquiry to assess

ability of a party stated to be suffering from mental infirmity including unsound mind have been laid down including the following:-

- (i) Som Nath Vs. Tipanna Ram Chandra reported as **AIR 1973 Bombay 276**;
- (ii) Kasturibai Vs. Anguri Chaudhary reported as **(2003) 3 SCC 225**;
- (iii) Jai Prakash Goel Vs. State reported as **114 (2004) DLT 222**
- (iv) Shailendra Bhargava Vs. Kanhiyalal Bhargava reported as **2006 (VII) AD (DELHI) 857**;
- (v) Anuradha Jha Vs. Santosh Singh reported as **2008 (102) DRJ 86 (DB)**;
- (vi) Surinder Kaur Vs. Sardar Rajdev Singh reported as **2009 (V) AD (DELHI) 545**

7. In the case of Kasturibai (supra), while discussing the provisions of Rule 15 of Order XXXII CPC, the Supreme Court had stated as below :-

“11. On a bare perusal of the said provision, it is evident that the Court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind. It further provided that even if a person is not so adjudged but is found by court on inquiry to be incapable to protecting his or her interest when suing or being sued or reason of any mental infirmity, an appropriate order thereunder can be passed. The respondent did not contend that appellant No. 1 herein is of unsound mind. As noticed hereinbefore, the respondent herself had filed an application before the trial court for holding an inquiry to the effect that she suffers from mental infirmity.

12. The learned trial court refused to do the same and in that view of

the matter the High Court, in our opinion, while setting aside the said order could only issue a direction directing the learned trial Judge to hold an inquiry so as to enable it to arrive at a finding as to whether the respondent herein was incapable of protecting her interest by reason of any mental infirmity or 'not. As no such inquiry was held, there cannot be any doubt whatsoever that the learned Single Judge committed a jurisdictional error in passing the impugned judgment which, the Division Bench as noticed hereinbefore upheld.”
(emphasis added)

8. The parameters of the inquiry required to be conducted under Order XXXII Rule 15 CPC were enunciated in the case of Som Nath (supra) in the following manner:-

“17. The above discussion clearly leads to the logical conclusion that when the plaint is being examined for the purpose of admission, if it contains a statement as required by clause (d) of Rule 1 of Order 7 that the plaintiff is a person of unsound mind and that a next friend is suing on his behalf, the court must at once hold an inquiry. It is the duty of the court to do so and it is not necessary for the next friend to make a separate application for that purpose. **This inquiry should ordinarily include the calling of the plaintiff himself and questioning him in Court. If the Court entertains doubt about the mental capacity or the soundness of his mind, it is open to the Court to take further assistance in the form of medical examination and the evidence of the doctor under whose observations the plaintiff may be kept. The quantum and extent of inquiries must be left in each case to the circumstances prevailing.** There may be a plaintiff who on immediate view may appear to be a person of unsound mind, and the Court may not need much evidence beyond recording of the questions put to and the answers given by the person concerned. There can be other cases which are not so clear and more evidence may be necessary. **However, apart from the total extent of the evidence that might be led, we would suggest that as a matter of strong commonsense approach, the plaintiff who is alleged to be of unsound mind**

should be invariably called for being questioned when the case falls under the second part of Rule 15 of Order 32. This inquiry is made "for the purpose of recording a finding by the court that the plaintiff is a person of unsound mind, or a person mentally so infirm as to be incapable of protecting his own interests. **The provisions of Rule 15 of Order 32 makes it possible for a next friend to sue on behalf of an adult person as a next friend only when the person is either so adjudged by a court of competent jurisdiction, or if not so adjudged, is found by the court on inquiry to be so. That is the foundation, prima facie, for a next friend to avail and proceed with the suit.** Such inquiry is obviously an ex parte inquiry for the court to give a finding and to admit the plaint and issue the process to the other side." (emphasis added)

9. For satisfying itself about a party's mental retardation or infirmity, the court can conduct an enquiry on this aspect, as has been laid down in Om Prakash Sharma vs. Union of India, **1984 (7) DRJ 208** and B.K. Khanna vs. K.N. Khanna, **ILR (1997) 2 Delhi 492**. The idea behind undertaking such an enquiry is that the court must first satisfy itself about the mental aptitude of the concerned party before proceeding to appoint a guardian *ad litem* for him/her. The said position has also been underscored in the case of Jairam Gurnani vs. Smt. Shanta Gurnani, **(1979) 15 Delhi LT 8** and Jai Prakash Goel (supra).

10. In the case of Jai Prakash Goel (supra), relying on the decision of the Supreme Court in the case of Kasturibai (supra), it was held that even if a person is not adjudged to be of unsound mind, but on inquiry by the court found to be incapable of protecting his interest when suing or being sued for reasons of mental inability and infirmity, appropriate order thereunder can be passed under Rule 15 of Order XXXII. The Court had laid emphasis on

the parameters of evaluating the mental condition of the concerned party and had observed that the court would be competent to pass an order upon it being satisfied with regard to the party's mental competence.

11. The nature of formal enquiry contemplated in the aforesaid provision is not of a kind that is required to be conducted under the provisions of the Lunacy Act and the court is well empowered to pass an order on an application filed under Order XXXII Rules 3 and 15 of the CPC upon being satisfied about the party's mental competence. The rigorous of enquiry under the aforesaid provisions is therefore not so strict as required under the Lunacy Act for the reason that a complete distinction that can be drawn between a person who is mentally unsound, vis-a-vis one who is incapacitated on account of mental infirmity, which is a condition of a lesser degree. Merely because a person may be suffering from a low intellectual quotient (IQ), may not be a ground to treat him as being of unsound mind. But at the same time, upon enquiry, the court can arrive at a conclusion that he would not be capable of protecting his interest in a litigation, which is the underlying purpose of the aforesaid provision.

12. In the case of B.K. Khanna (supra), while interpreting the provision of Order XXXII Rule 15 CPC, it was observed that the said provisions "cast a mandatory duty on the court to take steps to ensure proper representation for such persons so as to ensure that their interest in, relation to the proceedings are fully protected. These provisions are a legislative recognition of the well-known principle that the State, as indeed the Court, which is a part of the judicial wing of the State, is *in locus parentis* to its citizens, who are either minors, or are incapable of protecting their interests in judicial

proceedings by reasons of unsoundness of mind or mental infirmity.”

13. It may thus be concluded on a conspectus of the decisions rendered on the aforesaid aspect that the necessity of holding an inquiry under Rule 15 Order XXXII CPC emanates from the fundamental right of equal opportunity provided to every person under the Constitution of India, to sue or be sued and prosecute/defend his/her claim in a court of law. The cardinal principle of inquiry required to be conducted by a court as envisaged under Rule 15, is to assess as to whether the person concerned suffers from any unsoundness or mental infirmity, which makes him incapable of protecting his interest in a litigation. Thus, holding of an inquiry is a *sine qua non* and the court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind and/or incapable of protecting his/her interest in a litigation. The discretion is ultimately left with the court concerned to conduct an independent and impartial evaluation as it may deem fit and proper, depending on the facts and circumstances of each case. Only after arriving at the conclusion that a person is mentally incapable or unable to prosecute/defend the case, would the court proceed to appoint a fit person as his guardian *ad litem*. While doing so, the court must be mindful of the fact that such a person does not have any interest that is adverse to the applicant.

14. Coming to the case in hand, the respondent No.3 has presented himself before the court and during its interaction with him, posed several questions about his routine life, his family members and work and other aspects. He has stated that he had a major road accident in the year 1999, and had suffered serious brain damage as a result whereof, he has lost the

ability to read and write. Though he understands the questions being posed to him, his answers are found to be rather stilted and disjointed and shows a vacillating state of mind. That apart, it is noticed that the respondent No.3 is irresolute, wavering and repetitive. Although he states that he is a Chartered Accountant by profession, he is unable to furnish the address where his office is situated or the names of any of his clients. He has taken quite a while to recollect the names of his two daughters. The respondent No.2 is the younger sister of the respondent No.3, and is present in Court, but he has not been able to identify her.

15. Counsel for the respondent No.2 (sister of the respondent No.3) states on instructions from his client that the parties have arrived at a settlement through mediation reduced into writing by virtue of a Settlement Agreement dated 22.05.2015, the original whereof has been placed in the file of this case and the dispute between them has been amicably settled upon his client receiving a sum of Rs.1.25 crores in full and final settlement towards all her claims in respect of the estates of her deceased parents. He states that the respondent No.2 does not dispute the averments made in the present application with respect to the respondent No.3 and she does not wish to oppose the prayer made herein.

16. Considering the mental faculty of the respondent No.3 as has emerged from interacting with him, this court is of the opinion that he would not be in a position to protect his interests in the present petition as he appears to be a person of weak intellect, ineffectual and incapable of looking after his interests and affairs. Given the said circumstances, it is deemed appropriate to appoint the petitioner as the guardian *ad litem* of her husband, the

respondent No.3 so that his interests can be protected in the present litigation.

17. The application is accordingly allowed and disposed of.

