

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4776 of 2017 (O&M)
Date of Order:26th June, 2018

Lilu Ram

...Petitioner

Versus

Kapur Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Anuj Balian, Advocate,
for the petitioner.**

**Mr. Kiran Pal Singh, Advocate,
for respondents no.3, 4, 6, and 8**

ANIL KSHETARPAL, J.

Plaintiff-petitioner is in revision petition challenging orders dated 16.09.2010 and 22.09.2010 passed by the learned trial court as also the order passed by the learned first appellate court dated 11.04.2017.

Plaintiff, who has now died, claiming to be a person of unsound mind (lunatic) filed a suit through his wife Smt. Panmeshari Devi as a next friend. Subsequently, an application under Order 32 Rule 15 read with Section 151 of the Code of Civil Procedure was filed by the plaintiff claiming that plaintiff is a person of weak and unsound mind and does not understanding worldly affairs and therefore unable to safeguard of his own interest, so the suit instituted through next friend Smt. Panmeshari Devi has also died on 26.10.2005 and, therefore it has become necessary to appoint next friend of the plaintiff i.e. son named Rajbir who has no adverse interest against the plaintiff.

The aforesaid application was contested and the court after framing issue, dismissed the application vide order dated 16.09.2010 while

declaring that Lilu Ram, the plaintiff, is not a lunatic or person of unsound mind. Plaintiff was directed to prosecute his case vide subsequent order dated 22.09.2010. The Court dismissed the suit vide order dated 22.09.2010 on the ground that as counsel for the plaintiff insisted that Lilu Ram is a person of unsound mind and he cannot be forced to proceed with the case in person.

Plaintiff filed an appeal, which was again dismissed by the learned first appellate court being not maintainable.

During the course of arguments, it has been pointed out that Lilu Ram, the original plaintiff has died on 15.04.2011, therefore, the entire exercise has now become academic.

The original plaintiff has died and his legal heirs are to be brought on record. However, since an order has been passed dismissing the suit filed by the plaintiff, therefore that is required to be set aside.

Order 32 Rule 1 read with Rule 15 of the Code of Civil Procedure does not require the court to appoint next friend or guardian of the plaintiff. Order 32 Rule 1 which is also applicable to persons of unsound mind because of Rule 15, provides that every suit by a person of unsound mind shall be instituted in his name by a person who in such suit shall be called the next friend of the guardian.

Order 32 Rule 15 of the Code of Civil Procedure makes a provision of Order 32 Rule 1 applicable to persons of unsound mind. Order 32 Rule 15 CPC, no doubt provides for an enquiry by the court if a person has not been adjudged before or during the pendency of the suit to be of unsound mind. However, such enquiry would be relating to a defendant and not the plaintiff.

Order 32 Rule 3 of the Code of Civil Procedure provides that where a defendant is minor or of unsound mind, because of Rule 15, the Court shall appoint a proper person to be guardian for the suit. In fact, Order 32 Rule 3 CPC has been amended by the States of Punjab, Haryana and Union Territory of Chandigarh.

In fact, this issue has been examined by the High Court for the States of Punjab and Haryana in the judgment reported as **Jarnail Singh and others v. Smt. Naranjan Kaur and others, 2011(2) R.C.R.(Civil) 215.**

Paragraph 10 of the judgment reads as under:-

“10. I have carefully considered the rival contentions. In so far as appointment of next friend of minor plaintiff or plaintiff of unsound mind is concerned, Order 32 Rule 1 Civil Procedure Code does not envisage any order of the court for this purpose. On the contrary, Order 32 Rule 1 Civil Procedure Code lays down that every suit by a minor shall be instituted in his name by a person, who in such suit shall be called the next friend of the minor. Same provision applies to plaintiff of unsound mind by virtue of Order 32 Rule 15 Civil Procedure Code. Consequently, appointment of next friend of minor plaintiff or of plaintiff of unsound mind is not to be made by the Court under Order 32 Rule 1 and 15 civil Procedure code. On the other hand, Order 32 Rule 3 Civil Procedure Code provides for appointment of guardian or a minor defendant by the court and the same provision shall apply to defendant of unsound mind. Thus, where a plaintiff is minor or of unsound mind, suit in his name can be filed by next friend without any order from the court regarding appointment of next friend, but where defendant is minor or of unsound mind, then appointment of guardian of such defendant is required to be made by the court. In the instance case, the plaintiff was alleged to be of unsound mind and therefore, no order for appointment of next friend of the plaintiff was required to be made by the Court. Judgment of this Court in the case of Harjinder Singh (supra) pertains to defendant and not to plaintiff. Judgment in the case of Raj Kumar (supra) of course pertains to landlord-petitioner, who filed eviction petition, but in that case, already there was order by the Rent Control Authority regarding appointment of guardian and therefore, it cannot be said on the basis of this judgment that even appointment of next friend of a plaintiff, who is minor or

of unsound mind, is required to be made by the Court. There is distinction between a plaintiff, who is minor or of unsound mind and a defendant, who is minor or of unsound mind. In the case of such plaintiff, no order of the court is required for appointment of next friend, whereas in the case of such defendant, order of appointment of guardian ad litem is required to be made by the court. Since in the instant case, it was plaintiff, who was of unsound mind, no formal order for appointment of his next friend for institution of the suit, was required to be made. Consequently, judgment of the lower appellate court, non0suing the plaintiff on the ground that next friend of plaintiff was not appointed by the court, cannot be sustained.”

From the reading of the aforesaid, it is apparent that no enquiry is envisaged for appointment of a next friend as the plaintiff is entitled to suit through next friend. On a conjoint reading of Order 32 Rule 1 and Rule 15 of the Code of Civil Procedure, it is apparent that the court was not required to hold an enquiry before permitting the plaintiff to proceed with the trial of the case.

However, now since Sh. Lilu Ram has died, therefore, as noticed above, the issue has become academic. The orders under challenge are set aside.

Learned trial court would permit the legal heirs of the plaintiff to get themselves impleaded as legal heirs and proceed with the suit, if they so desire.

The revision petition is allowed.

Parties through their counsel are directed to appear before the learned trial court on 18.07.2018.

26th June, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

YES/NO
YES/NO