

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No. 955 of 2018**

Rupesh Khaparde, S/o Shatruhan Khaparde, Aged about 31 years, through his mother Ahilya Bai, W/o Shatruhan Khaparde, aged about 60 years, R/o Shanti Nagar, Near Balaji Medical, Kumhari, District Durg (C.G.)

----Petitioner

**Versus**

1. Laxmi Khaparde, W/o Rupesh Khaparde, aged about 24 years,
2. Sagar, S/o Rupesh Khaparde, aged about 3 ½ years, Minor guardian- Laxmi Khaparde,

Both are resident of Jewra Sirsa, Bhatgaon, Tahsil Durg, District Durg (C.G.)

---- Respondents

|                 |                                |
|-----------------|--------------------------------|
| For Petitioner  | : Smt. Renu Kochar, Advocate.  |
| For Respondents | : Shri Vipin Tiwari, Advocate. |

**Hon'ble Shri Justice Sanjay K. Agrawal****Order On Board**

**10/01/2019**

(1) By the impugned order dated 27.08.2018, petitioner's application under Order 32 Rule 15 of the Code of Civil Procedure (henceforth "CPC") has been rejected.

(2) Learned counsel appearing for the petitioner would submit that impugned order has been passed without making enquiry as envisaged under Order 35 Rule 15 of the CPC and, therefore, the same is liable to be set aside.

(3) Per contra, counsel for the respondent, while supporting the impugned order, would submit that the impugned order is in accordance with law, which does not call for any interference.

(4) I have heard learned counsel appearing for the parties.

(5) At this stage, it would be appropriate to notice under Order 35 Rule 15 of the CPC, which reads thus:-

**“15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind.-** Rule 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 for 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.”

(6) The aforesaid provision clearly provides for making enquiry on the incapability of the person, who is incapable of protecting his or her interest. But in the instant case, no enquiry has been made before passing the impugned order and, therefore, the impugned order is liable to be and is hereby set aside. The trial Court is directed to make enquiry on the said application under Order 32 Rule 15 of the CPC and thereafter decide the said application afresh expeditiously preferably within a period of two months from the date of receipt of certified copy of this order.

(7) Accordingly, the writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-

