

CIVIL REVISION APPLICATION NO. 918 OF 2014

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mental disability. So only the sister, with no conflict of interest, carried on the litigation.

3. At any rate, to cure this defect, now Ms. Furtado, who seems to be acting as the *de facto* guardian, filed this Civil Application under Order 32, Rule 15 of CPC. She wanted to be formally appointed as a guardian or next friend to her brother, so she could take the proceedings forward both in her name and in her brother's name.

4. The learned counsel for the respondent has drawn my attention to the *National Trust for Welfare of persons with Autism, Cerebral, Palsy, Mental Retardation and Multiple Disabilities Act, 1999*. He submitted that this is a special enactment that provides an elaborate mechanism for appointing guardians for the persons under disabilities enumerated in the Act. According to him, one of them is mental retardation. He has also been diligent enough to bring to my notice a couple of judgments on this count: one from this Court in *Suresh v. Champawati*, decided on 7.10.2016; and another from the High Court of Madras in *G. Nityanadnam v. D. Saritha & Ors.*¹, both rendered by the learned Single Judges.

5. In both the matters, the parties applied under the Guardian and Wards Act to have a guardian appointed for the mentally retarded persons. Then the Courts have held that in the face of a special enactment, the generic provisions of Guardians and Wards Act cannot be invoked. Pertinent is the fact that in

¹ 2013-(3)-law-page no. 412

neither case was the party applied in the pending judicial proceedings. To appoint a guardian *ad litem*, we may need to invoke only the provisions under Order 32. And to that extent, the special enactment has not displaced CPC.

6. I, therefore, allow the Civil Application, appointing Miss Yvonne Maria Furtado to be the guardian at litem or the next friend of her brother Alroy Joseph Furtado. The applicant is permitted to effect the necessary changes in the pleadings and the cause title forthwith. Therefore, Civil Application No. 230 of 2019 is allowed. Post the Civil Revision Application No. 918 of 2014, for final hearing on 03.07.2019.

[DAMA SESHADRI NAIDU, J.]