

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5168 of 2017(O&M)
Date of Decision: 02.04.2019

Pirithi Pal Singh

.....Petitioner

Versus

Jagtar Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Vivek Singla, Advocate
for the petitioner.

Mr. G.S. Dhillon, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this revision petition against the order dated 31.05.2017 passed by Civil Judge (Senior Division), Rupnagar vide which application filed by the petitioner for appointment of guardian/next friend of Prithi Pal Singh was rejected.

[2]. The application was filed for appointment of guardian/next friend of the plaintiff Prithi Pal Singh as he has become disabled to give evidence in the suit on account of unfortunate accident in which he had suffered severe head and

spinal cord injury and has become paralyzed by limbs and has also lost his speech. The ailment has been categorized as 'Quadriplegic'. In support of the application, the petitioner had also attached medical certificate.

[3]. The application has been declined by the trial Court primarily on the ground that the application did not contain any specific provision of law under which the same was filed and secondly, the petitioner can at best give his own evidence instead of being appointed as guardian of the plaintiff to depose on his behalf.

[4]. Even though, there is no specific provision mentioned in the application for appointment of guardian for the plaintiff, but in pith and substance, Order 32 Rule 15 CPC prescribes that the application can be filed for a person who is adjudged in an enquiry to be of unsound mind and shall also apply to a person who, though not so adjudged was found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting his interest when suing or being sued.

[5]. In the instant case, Prithi Pal Singh by virtue of his injuries is alleged to have incurred disability within the parameters of Order 32 Rule 15 CPC. Before passing any order in the nature of impugned order, the trial Court was obligated to form an opinion in respect of mental incapacity of the plaintiff to

represent his cause on the basis of injuries or unsoundness of his mind. Even though, he has not been adjudged as such, but before dismissing the application, the Court was required to hold an inquiry in respect of his incapacity by reasons of his mental infirmity or disability of any kind.

[6]. Since the requirement in terms of Order 32 Rule 15 CPC has not been complied with by the trial Court, therefore, I deem it appropriate to remit the case to the trial Court with the direction to adjudge the state of mind of the plaintiff as per procedure prescribes under Order 32 Rule 15 CPC.

[7]. At this stage, without meaning anything on merits of the case, impugned order dated 31.05.2017 passed by Civil Judge (Senior Division), Rupnagar is set aside. This revision petition is accordingly allowed. The case is remanded to the trial Court with a direction to hold inquiry before adjudging the state of mind of the plaintiff in the context of prayer made by the petitioner in the application for appointment of guardian/next friend of the plaintiff.

02.04.2019

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**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**