

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 18 OF 2020**

Santan Pereira,
through her next friend
Juliana Caldeira

... Petitioner

Versus

Ramesh Krishna Mayekar & Anr.

... Respondents

Shri E. Dias, Advocate for the Petitioner.

Shri J.P. Mulgaonkar, Senior Advocate with Ms. Rupa Banaulikar,
Advocate for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 27th February 2020

ORAL ORDER:

The petitioner is the plaintiff in Regular Civil Suit No.145/2010, pending before the Civil Judge, Junior Division, Panaji. Before the trial Court, one Mrs. Juliana Caldeira applied under Order 32 Rule 15 CPC. She wanted to prosecute the case as the next friend—guardian ad litem—of the plaintiff. The trial Court rejected that request. Aggrieved, the petitioner, represented by Mrs. Juliana Caldeira, has approached this court.

2. As pointed out by the learned Senior Counsel for the respondents, to invoke Order 32 Rule 15 on the premise that a party has been mentally incapacitated, there ought to have been an adjudication. Or the Court must have examined the person concerned and concluded that the party is unable to prosecute the case because of his or her mental infirmity.

3. In this case, the petitioner has produced a medical certificate which records that the petitioner has been suffering from “age-related cerebral atrophy.” The rest of the health parameters are recorded to be normal. Then, the trial Court felt that the medical certificate would not indicate any insanity or incapacity. Curiously, the petitioner has declined to avail herself of an opportunity to have been examined by the Court, as the second limb of Order 32 Rule 15 provides for. Now, the learned counsel for the petitioner wants the Court's leave to apply for an adjudication under Order 32 Rule 15 concerning the petitioner's insanity or mental infirmity.

4. I reckon, as the Rule provides, the petitioner requires no specific permission from the Court. That said, as the petitioner's counsel has persisted, I hold that the petitioner is free to take all steps legally permissible in this regard.

I, accordingly, close the Writ Petition. Authenticated copy to be issued to the parties.

DAMA SESHADRI NAIDU, J.

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