

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 866 OF 2022

Amulya Kumar Biswal

....

Petitioner

Mr. Arun Kumar Mishra, Advocate

-versus-

Bijaylaxmi Biswal

....

Opp. Party

Mr. Damodar Patra, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

27.10.2022

Order No.

I.A. No. 904 of 2022

1. 1. This matter is taken up through hybrid mode.
2. 2. This is an application for grant of leave to Shri Apurba Kumar Biswal, brother of Petitioner, to prosecute the CMP on his behalf.
3. 3. Upon hearing learned counsel for the parties, this Court feels that leave should be granted to Shri Apurba Kumar Biswal, brother of the Petitioner, to prosecute the CMP. Hence, prayer is allowed.
4. 4. The I.A. is accordingly disposed of.

(K.R. Mohapatra)
Judge

CMP NO. 866 OF 2022

2. 1. This matter is taken up through hybrid mode.
2. 2. Order dated 11th August, 2022 (Annexure-4) passed by learned Civil Judge (Junior Division), Salipur in C.S. No. 99 of 2014 is under challenge in this CMP, whereby an application filed

by the Petitioner under Order XXXII Rule 4 C.P.C. for appointment of his guardian has been rejected.

3. Mr. Mishra, learned counsel submits that the sole Defendant is the Petitioner in this CMP. During pendency of the suit, the Defendant became mentally abnormal. Hence, an application under Order XXXII Rule 4 C.P.C. was filed by his brother to be appointed as his guardian on his behalf. Said application was rejected on the finding that the Defendant-Petitioner could not file any document to show that he is a person of unsound mind. Learned trial Court also held that OPD ticket does not show that the Defendant-Petitioner is of unsound mind. It is his submission that during pendency of the suit, he developed some mental illness for which he is being treated at the Mental Health Institute, SCB Medical College and Hospital, Cuttack. The OPD ticket has also been annexed to the CMP as Annexure-2 in support of his case.

4. Mr. Mishra, learned counsel, however, submits that the Petitioner should have filed some better documents to establish that mental illness of the Defendant-Petitioner is of such nature that he is not in a position to defend his case for which a guardian should be appointed. In that view of the matter, he submits that interest of justice will be best served, if the Petitioner is permitted to move a fresh application with better particulars and documents for appointment of a guardian of the Defendant.

5. Mr. Patra, learned counsel for the Opposite Party vehemently objects to the same and submits that the plea of unsound mind is vague and an afterthought. The document annexed to the CMP as Annexure-2 is a fabricated one. There is

no material on record to show that the Defendant is of unsound mind. He also made an elaborate submission on the case of the Plaintiff and submits that in order to linger the proceeding, such a plea has been taken at the belated stage. It is his submission that after appearing in the suit, the Defendant did not file his written statement. As such, he was set ex parte. Thus, a novel idea has been adopted by the Defendant-Petitioner to get rid of the latches on his part. As such, learned trial Court has committed no error in dismissing the petition under Order XXXIX Rule 4 C.P.C.

6. Considering the rival contentions of learned counsel for the parties and on perusal of the record, this Court finds that the OPD ticket annexed to the CMP as Annexure-2 issued by the Mental Health Institute, SCB Medical College and Hospital, Cuttack is not sacrosanct to come to a conclusion that the Defendant-Petitioner is of unsound mind. It is, however, submitted by learned counsel for the Petitioner that the Petitioner should have filed documents to show that unsoundness of mind of the Defendant is of such nature that a guardian is required to be appointed. True it is that if the party to the suit is of unsound mind, a guardian or a next friend, as the case may be, should be appointed to represent his case. But, in the instant case, although some evidence is available to the effect that the Petitioner is being treated at Mental Health Institute of SCB Medical College and Hospital, Cuttack, but the same is not sufficient to consider an application for appointment of a guardian on his behalf.

7. In that view of the matter, the CMP is disposed of with a direction that in the event an application is filed with better particulars and documents for appointment of a guardian of the

Defendant within a period of three weeks hence along with certified copy of this order, the same shall be considered by learned trial Court in accordance with law giving opportunity of hearing to the parties concerned and also giving opportunity to the Plaintiff- Opposite Party to file objection. Till disposal of the petition, as aforesaid, the impugned order under Annexure-4 shall be kept in abeyance, which shall be subject to the result of the order to be passed in the said petition.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

