

110

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-13744-2023

Date of decision: 11.08.2023

GURPREET KAUR MAINI AND OTHERS

...Petitioners

Versus

IIFL HOME FINANCE LIMITED AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Vishal Aggarwal, Advocate for the petitioners.

Mr. Vineet Sehgal, Advocate for respondents No. 1 and 2.

Mr. Rohit Kapoor, Advocate for respondent No. 3.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioners are the principal borrowers from co-respondents No.1 and 2. However, co-respondent No.3 has liquidated the entire mortgaged money(ies) to co-respondents No.1 and 2, and, the factum (supra), is undisputed.

2. Though under an agreement, as became executed inter-se the petitioners, and, co-respondents No.1 and 2, the liability to liquidate the borrowed sums of money became encumbered, upon, the co-petitioners No.1 to 4. However, as above stated, the liquidation(s) of the borrowings, as made by the co-petitioners from co-respondents No.1 and 2, rather has occurred at the instance of co-respondent No.3.

3. Be as it may, in sequel of the borrowings, as made by the petitioners from co-respondents No.1 and 2 rather becoming liquidated by co-respondent

which is however jointly owned by the petitioners. The reason for drawing the above inference becomes sparked from the factum, that the co-respondent No.3 rears an apprehension, that despite under the apposite agreement, though liquidations of the borrowings as made by all the co-petitioners from co-respondents No.1 and, 2, thus were made by co-respondent No.3, but yet in the wake of co-petitioner No.4 being purportedly not in the befitting cognitive state of mind, thereby his share in the joint mortgaged property rather would not become transferred to him, in the registered deed of conveyance.

Be that as it may, it is only in the event of liquidations being made of the mortgage money(ies) by co-respondent No.3, that the instant writ petition has been filed for staying the e-auction proceedings.

4. Though, the learned counsel appearing for the lending institution (respondents No.1 and 2) submits, that since the entire mortgaged money(ies), stand redeemed to the financial institution concerned, therefore, he has been imparted instructions to withdraw the e-auction notice, and, also submits that he has also been imparted instructions to issue the requisite NOC to the petitioners. Therefore, but obviously there would be redemption of the mortgaged property and, resultantly it would be free from all encumbrances.

5. However, a dispute has emerged amongst the petitioners, and, co-respondent No.3, who has liquidated the borrowings, as made by the petitioners from co-respondents No.1 and 2, thus to the latter. The said dispute as stated (supra), is founded upon the premise, that there was some agreement inter-se the petitioners, and, co-respondent No.3, whereby the latter was permitted to liquidate the borrowings, as made by the petitioners to the lending institution, but subject to

all the joint co-owners executing a deed for transferring the mortgaged property in favour of co-respondent No.3.

6. Though, the learned counsel appearing for the co-petitioners No.1 to 3 submits, that he has been imparted instructions by the petitioners to make a statement before this Court, that they are ready and willing to, in respect of their shares in the mortgaged property, thus execute a registered deed of conveyance in favour of co-respondent No.3.

7. However, since the transfer of mortgaged property would fully take place only when the fourth co-owner in the mortgaged property, namely Jivtesh Singh Maini, also is a co-participant alongwith the co-petitioners, in the deed of conveyance, thus to be executed in respect of the property concerned, with co-respondent No.3. It is averred in the application bearing No.CM-10359-CWP-2023, that the fourth co-owner in the joint mortgaged property be permitted to be impleaded through his next friend, and, natural guardian, hence in the instant petition. The said impleadment is rested on the factum that thereby in case this Court proceeds to appoint the person concerned, as the next friend, and, natural guardian of the disabled fourth co-owner in the joint mortgaged property concerned, thereupon he would become enabled to execute a registered deed of conveyance in respect of the entire complement of the joint mortgaged property, thus with co-respondent No.3.

8. However, in case the said impleadment is allowed, thereupon this Court would thus grant leave to the person concerned, to on behalf of the disabled fourth co-owner in the joint mortgaged property, thus execute a registered deed of conveyance qua the entire complement of the joint mortgaged property hence with co-respondent No.3.

9. Be that as it may, for the reasons to be assigned hereinafter, the asked for impleadment as also the asked for leave, that the person concerned, being permitted to, on behalf of the fourth co-owner in the joint mortgaged property, execute a registered deed of conveyance with co-respondent no.3, rather is declined.

10. Therefore, since obviously leave is but required to be granted by this Court, that Ms. Gurpreet Kaur Maini, be appointed as friend, and, next friend for the fourth co-owner namely Jivtesh Singh Maini, so that the said next friend, and, a guardian, may proceed to execute a deed of conveyance in respect of the entire mortgaged property concerned, thus alongwith the co-petitioners, hence with co-respondent No.3.

11. For the reasons to be assigned hereinafter, this Court refrains, from granting the espoused relief (supra), imperatively for the reason that there is no medical certificate appended alongwith the application bearing No.CM-10359-CWP-2023, thus detailing therein the gravity of the deteriorating mental health of the co-owner concerned. In the absence of the above apposite evidence, this Court refrains, from thus concluding that as a matter of fact the said co-petitioner No.4, who has been asked to be impleaded as such through his next friend, and, natural guardian, thus has been entailed with a deteriorating mental disease, whereas, the above evidence was required to be adduced, for this Court, may be appointing one Ms. Gurpreet Kaur Maini, as his next friend, and, natural guardian, thus for the relevant purpose.

12. In other words, the addition in the array of co-petitioners in the garb of the said application being filed, is merely an attempt to ensure, through an affirmative order being made thereon, thus the impleadment hence in the array of

thereby ensuring that the person concerned, becomes facilitated to draw a registered deed of conveyance with co-respondent No.3.

13. Even otherwise, for the reasons to be assigned hereinafter, even if the said medical evidence was placed on record, yet this Court would in the exercise of its writ jurisdiction, rather refrain from doing so, as the jurisdiction for appointing a next friend, and, a natural guardian for the fourth co-owner in the mortgaged property, thus becomes vested in the designated authority contemplated under Section 14 of The Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as “the Act of 2016), and/or, in the Civil Court concerned, thus through the mandate encapsulated under order XXXII of CPC.

14. It is submitted today, before this Court by the learned appearing counsels, that the jurisdiction in the above respect, is contained in Section 14, of the Act of 2016, provisions whereof stands extracted hereinafter, whereunders, the apposite jurisdiction becomes solitarily vested in the District Judge concerned.

*“14. **Provision for guardianship.**—(1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:*

Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

(3) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose.”

15. Importantly also when there is a statutory coinage(s) existing therein, thus displaying that when the District Judge concerned, or the designated authority concerned, as the case may be, are engaging themselves in the process of appointing a next friend, and, natural guardian qua the person, thus with a purported mental disability, thereby debarring the said person to take legally binding decisions, that in such engagements respectively by the District judge concerned, or the designated authority concerned, “there has to be a consultation with such a person”. Necessarily when the gravity of the mental deterioration, which hence has purportedly beset the fourth co-owner in the property, has not been spelt forth, in the amended writ petition nor becomes set forth in the apposite medical certificate, given the said medical certificate remaining unappended with the apposite application. Therefore, also unless the said gravity became so spelt in the apposite application or may become spelt in the requisite medical certificate issued by the competent medical practitioner, whereby the fourth co-owner may become capacitated to engage himself in the apposite consultative process, thus either with District Judge concerned, or with designated officer concerned, as mentioned in Section 14 of the Act of 2016, thereupon (supra), rather would become ably facilitated to appoint a next friend, and, natural guardian, thus for the requisite purpose rather for the fourth co-owner in the property concerned.

16. Therefore, at this stage, this Court does not deem it fit, and, appropriate, to grant the apposite leave to Ms. Gurpreet Kaur Maini, to permit her to, as such, become his next friend, and, natural guardian, of the purportedly disabled fourth co-owner in the property concerned, nor this Court would obviously permit her to execute on behalf of the said, a registered deed of conveyance of the said person's share in the mortgaged property.

17. However liberty is assigned to the co-petitioner No.4 to move through his next friend and natural guardian, the appropriate application before the District Judge concerned, or before the designated authority concerned, thus espousing therein that the purposive prayer becoming affirmatively allowed. Importantly, the said application shall be accompanied by a medical certificate issued by a competent medical officer concerned, detailing therein, the extent of the mental deterioration besetting the fourth co-owner in the property concerned, and, if the mental condition of the fourth co-owner in the property concerned, rather has deteriorated, to such an extent, thus thereby he is barred from engaging himself in the relevant consultative process, thereupon, the applicant may not choose to adopt the remedy, as contemplated under Section 14 of the Act of 2016.

18. Though, Section 14 of the Act of 2016, thus opens with a non-obstante clause, and, thus overrides any other provisions contained in other laws relating to the subject matter concerned, and, thus to a limited extent ousts, the provisions of Order 32 of CPC, provisions whereof stands extracted hereinafter, and, which makes statutory speakings in respect of the empowerment of the Civil Court concerned, to appoint a friend and natural guardian, for a person of unsound mind, who may be a person, who has been completely deprived of his cognitive faculties, and, who may be becomes spelt so, in the medical certificate, thus issued by the competent medical practitioner concerned. Nonetheless in the

wake of the necessity of consultation of a person with a purported disability, thus being required both before the District Judge concerned, and/or before the designated authority concerned, so that thereby an able order is made, thus for appointing for the relevant purpose, a next friend, and, natural guardian hence for the person with such a mental disability. Moreover, since the above consultative process, thus involving the person with such mental disability also requires, that his cognitive faculties have not deteriorated to the extent, that thereby he is barred from engaging himself in the relevant consultative process. Resultantly, in the wake of the above evident mental disablement of the person concerned, thus barring the person concerned, to participate in the relevant consultative process, thereupon though the said statutory provision opens with a non-obstante clause, thereby hence to a limited extent does oust hence the provisions of even Order XXXII, yet it thus cannot be made unworkable nor in the said eventuality rather Order XXXII of the CPC, can be deemed to have become redundant, irrespective of any overriding effect becoming assigned to the apposite statutory provisions, whereby but to a limited extent (supra), the same oust(s) the provisions of Order XXXII of CPC.

“ORDER XXXII

***SUITS BY OR AGAINST MINORS AND PERSONS OF
UNSOUND MIND***

1. Minor to sue by next friend.—Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. Where suit is instituted without next friend, plaint to be taken off the file.—(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

[2A. Security to be furnished by next friend when so ordered.—(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]

3. Guardian for the suit to be appointed by Court for minor defendants.—*(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.*

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) Order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian [upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or, where there is [no father, mother or other natural guardian], to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

[(4A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.]

[(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.]

[3A. Decree against minor not to be set aside unless prejudice has been caused to his interest.—(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reasons of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.]

4. Who may act as next friend or he appointed guardian for the suit
—(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent [in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested [or out of the property of the minor], and may give directions for the repayment

or allowance of such costs as justice and the circumstances of the case may require.

5. Representation of minor by next friend or guardian for the suit.

—(1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. Receipt by next friend or guardian for the suit of property under decree for minor.*—(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either—*

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application :

[Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian—

(a) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(b) is the parent of the minor.]

7. Agreement or compromise by next friend or guardian for the suit.*—(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into*

any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

[(1A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor :

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is, for the benefit of the minor.]

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor:

8. Retirement of next friend.—*(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in this place and giving security for the costs already incurred.*

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

9. Removal of next friend.—*(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within [India], or for any other sufficient cause, application, may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.*

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor,

and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

10. Stay of proceedings on removal, etc., of next friend.—(1) *On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.*

(2) *Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.*

11. Retirement, removal or death of guardian for the suit.—(1) *Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.*

(2) *Where the guardian for the suit, retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.*

12. Course to be followed by minor plaintiff or applicant on attaining majority.—(1) *A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.*

(2) *Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.*

(3) *The title of the suit or application shall in such case be corrected so as to read henceforth thus:*

“A.B., late a minor by C.D., his next friend, but now having attained majority.”.

(4) *Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.*

(5) *Any application under this rule may be made ex parte but no order discharging a next friend and permitting a minor plaintiff to*

proceed in his own name shall be made without notice to the next friend.

13. Where minor co-plaintiff attaining majority desires to repudiate suit.—(1) *Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.*

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. Unreasonable or improper suit.—(1) *A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.*

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

[15. Rules 1 to 14 (Except rule 2A) to apply to persons of unsound mind.—Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of 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 being sued.]

[16. Saving.—(1) *Nothing contained in this Order shall apply to the Ruler of a foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.*

(2) Nothing contained in this Order shall be construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.]”

19. In consequence, if the competent medical practitioner concerned, in his medical certificate declares, that the mental disability encumbered, upon, the fourth co-owner in the property concerned, has not deteriorated to an extent, that he is barred from engaging himself, rather in the relevant consultative process, either before the District Judge concerned, or before the designated authority concerned, wherebefore whom an application may be filed, thereupon the applicant may thus prefer any application under Section 14 of the Act of 2016. However, if the mental condition of the fourth co-owner in the property, has deteriorated to an extent or is of such a gravity, that he is barred from engaging himself in the apposite consultative process, thereby since for reasons (supra), the provisions of Section 14 of the Act of 2016, do not yet oust the workability of Order 32 of CPC. Resultantly, in such an event the applicant may prefer an application under the provisions of Section 32 of the CPC before the jurisdictionally competent Civil Court concerned, and, the latter may proceed to, thus in accordance with law expeditiously appoint a friend, and natural guardian, thus for the relevant purpose.

20. However, as submitted by the learned counsel appearing for the lending institution concerned, on instructions imparted to him, by the said institution, that till the said expeditious decision making process, is made either by the statutory authorities spelt in Section 14 of the Act of 2016 or by the learned Civil Court concerned, on an application to be preferred, as deemed fit under Order 32 of the CPC, thereupto the e-auction notice shall not be galvanized to any ill effect. In consequence, after accepting the above submission, it is ordered accordingly. Moreover, till the abovesaid happens

thereupto liquidations of the borrowings as made by the co-petitioners, from the financial institution concerned, thus by co-respondent No.3 hence to co-respondents No.1 and 2, shall be kept in a separate account.

21. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

11.08.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No