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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.06.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

C.R.P.No.547 of 2025
& CMP.No.3137 of 2025

E.K.P.Rajender

... Petitioner

Vs.

K.Nachiyappan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order passed by the District Munsif Court, Tiruchengode, dated 23.10.2024 made in Un Numbered I.A... of 2024 in O.S.No.41 of 2010.

For Petitioner : Mr.B.Jawahar

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order passed by the District Munsif Court, Tiruchendgode, dated 23.10.2024 in I.A.Un Numbered of 2024 in O.S.No.41 of 2010.



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2. Heard Mr.B.Jawahar, learned counsel for the petitioner. Despite service of notice on the respondent, the respondent has not chosen to enter appearance either in person or through any counsel.

3. The petitioner is the defendant in O.S.No.41 of 2010 before the District Munsif Court, Tiruchengode. The petitioner took out an application to appoint his father as the guardian for the limited purposes of verification of documents/exhibits that may be filed in the said suit, considering the fact that the petitioner is a disabled person, who is not able to read or write on his own. The Trial Court has dismissed the said application even without numbering the same on the ground that the earlier application in I.A.No.14 of 2021 was dismissed and the petitioner has allowed the said order to become final, without having challenged the same by way of appeal/revision.

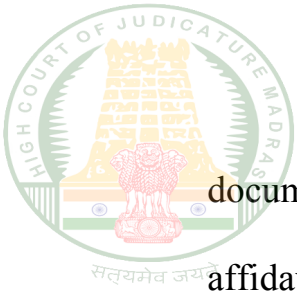
4. The learned counsel for the petitioner would submit that the earlier application was dismissed only on a technical reasoning that the petitioner did not substantiate the averments in the affidavit that he is unable to read or write and in order to cure the said reasons assigned by the Trial Court, the



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subsequent application has been taken out, with supporting documents. He would therefore submit that there can be no *res judicata* and the Trial Court ought not to have dismissed the said application on the ground that the order in the earlier application has become final. I find force in the submissions of the learned counsel for the petitioner. When the earlier application was filed, though for the very same purposes, the Court declined to accept the request of the petitioner only on the ground that the petitioner was not able to substantiate the self serving averments set out in the affidavit filed in support of the application.

5.The petitioner, no doubt, had an option to prefer an appeal or revision as against the said order, however, the petitioner has chosen to cure the deficiency, which resulted in the dismissal of the application and along with supporting documents, he has chosen to file a fresh application for appointing his father as a guardian for the limited purposes of the verification of documents/exhibits. The learned counsel for the petitioner would also submit that the petitioner would be in a position to answer the questions put to him and withstand chief and cross-examination in the witness box. However, only in order to verify the genuineness of the



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documents/exhibits and for the purposes of filing any applications or affidavits, the assistance of his father would be required which would also be verified and signed by the father/guardian to be appointed.

6.The petitioner's application cannot be said to be not maintainable, as already discussed herein above. The request of the petitioner is not unreasonable. In fact, the present application has only been filed to get over the deficiency cited by the Trial Court in the earlier application. The petitioner has also filed supporting documents in the form of medical records to establish his disabilities. Therefore, the Trial Court ought to have taken up the application and numbered the said application and after hearing the other side. Though normally I would have directed the Trial Court to number the said application and decide the same, considering the fact that the respondent has not chosen to appear even before this Court to defend the order, I am satisfied that sufficient opportunities have been given to the respondent and therefore, there would be no requirement to number the Interlocutory Application and thereafter pass orders on the application seeking appointment of guardian.



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7. In view of the above, the order in unnumbered I.A.No... of 2024 in O.S.No.41 of 2010 is hereby set aside and the father of the petitioner/defendant is appointed as the guardian of the petitioner/defendant for the limited purposes of filing, verification, signing affidavits and pleadings and also verifying exhibits, which may be put to the petitioner/defendant during chief/cross-examination. However, it is made clear that the evidence shall be adduced only by the petitioner/defendant and not by the guardian. The Court shall also permit the deposition given by the petitioner/defendant to be signed by his father as guardian. It is made clear that the guardian shall not interfere during the course of examination of the petitioner/defendant by prompting or suggesting to the petitioner/defendant, in any manner.

8. With these above observations and directions, this Civil Revision Petition is disposed of. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

10.06.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

Internet : Yes / No

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P.B. BALAJI,J.

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To

The District Munsif Court, Tiruchengode.

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