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C.R.P.Nos.5377 of 2024
and 270 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.Nos.5377 of 2024 and 270 of 2025
and
C.M.P.No.29808 of 2024 in C.R.P. No.5377 of 2024

C.Murugesan
rep. By his guardian M.Priyanga

.. Petitioner in
both C.R.Ps

VS

M.Nagaraj

.. Respondent in
both C.R.Ps

Petitions filed under Article 227 of the Constitution of India against the orders dated 11.09.2024 made in I.A.No.2 of 2023 in O.S.No.11 of 2023 and I.A.No.3 of 2023 in O.S.No.11 of 2023 on the file of the Principal District Judge, Thiruvavarur.

For Petitioner : Mr.R.Venkata Varathan
in both CRPs

For Respondent : Mr.T.Padmanabhan
in both CRPs

COMMON ORDER

These civil revision petitions challenge the orders dated 11.09.2024 passed by the learned Principal District Judge at



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Thiruvarur in I.A.Nos.2 and 3 of 2023 respectively. As both proceedings are connected, I clubbed the matters and heard them together.

2. I.A.No.2 of 2023 is an application filed under Order XXXII Rule 15 of Code of Civil Procedure seeking to appoint the daughter of the civil revision petitioner as the guardian for the allegedly mentally challenged defendant.

3. I.A.No.3 of 2023 is an application filed under Order IX Rule 7 of Code of Civil Procedure seeking to set aside the *exparte* order passed in O.S.No.11 of 2023 dated 14.03.2023.

4. O.S.No.11 of 2023 is a suit for specific performance of an agreement of sale dated 04.10.2019. According to the plaintiff, the defendant entered into an agreement with him for alienation of the properties owned by him. The summons were served on the defendant and he remained *exparte* and was set *exparte* on 14.03.2023. The suit progressed thereafter.

5. Similarly, pleading that he had suffered an accident in the year 2018 and had sustained major head injuries, therefore lost his



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state of mind, his daughter viz., one Ms.Priyanga filed an application in I.A.No.2 of 2023 seeking to appoint her as guardian to the proceedings.

6. The learned Trial Judge took up the application under Order XXXII Rule 15 C.P.C. and the application under Order IX Rule 7 C.P.C. on 11.09.2024 and dismissed the same. Challenging the order in I.A.No.3 of 2023, C.R.P.No.270 of 2025 has been presented and challenging the order in I.A.No.2 of 2023, C.R.P. No.5377 of 2024 has come before this Court.

7. Notice was ordered in the revisions and Mr.T.Padmanabhan has entered appearance for the respondent/plaintiff.

8. I heard both sides.

9. Insofar as the application under Order IX Rule 7 C.P.C. is concerned, the defendant has to give a 'good cause' for not appearing before the Court on the day on which the case was called for hearing. The reason given by the defendant to set aside the *exparte* order is that his daughter, who is a practising advocate in Chennai, had handed over the papers to a friend of hers to file the vakalat. Unfortunately, he did not file vakalat, which resulted in the



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defendant being set *exparte*.

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10. The deponent added that on account of the serious head injuries that suffered by the defendant, he had to be treated regularly for his mental health and that he suffers from paranoia.

11. This application was opposed by the plaintiff pointing out that without appointing herself as a guardian, a mere application to set aside the *exparte* order is not maintainable. He asserted that the mental disability has to be proved by way of sufficient medical records. He further added that as the mother of the deponent is very much alive, she could be appointed as a guardian and sought for dismissal of the application. Similarly in I.A.No.2 of 2023, which is also based on the allegations that the original defendant is suffering from mental illness, the party wanted to appoint herself as guardian. This application too was opposed.

12. The learned Trial Judge came to the conclusion that no medical records had been produced by the defendant. Therefore, concluded that the plea that the defendant is suffering from mental illness is unsustainable. He also pointed out that the assistance of medical experts had not been sought for, for the purpose of



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satisfying the Court. He further pointed out a reply notice was issued on 25.01.2022 by the defendant and he had engaged a lawyer all by himself. He refers to this date, because the accident is of the year 2018, agreement is of the year 2019 and the reply is of the year 2022. Hence, the learned Trial Judge dismissed the application.

13. Both Mr.R.Venkata Varathan and Mr.T.Padmanabhan reiterated the contentions they placed before the Court below.

14. Under Order XXXII of CPC, when a suit is presented against a person who is mentally challenged, the law requires that the person should be sued through a guardian. This is because, the law throws a protective cloth around minors and persons who are not in a position to take a decision by themselves such as mentally challenged persons, from being arrayed as defendants in their own capacity and a decree be obtained.

15. In terms of Order XXXII Rule 15 CPC, the rules that apply for minors, excepting Rule 2A, is made applicable to mentally challenged persons also. The Rule itself contemplates that the Court must conduct an enquiry and find out if the person is capable of



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conducting litigation or if he is prevented from conducting the litigation, on account of any mental infirmity. It is clear from the order that the procedure under Order XXXII Rule 15 C.P.C. had not been followed. There is nothing on record to show that the learned Trial Judge had conducted a personal enquiry of the defendant before he came to the conclusion that a guardian need not be appointed.

16. When the Rule contemplates a particular procedure to be adopted by the Court, then the procedure has to be strictly adhered to. If in the unfortunate event, the defendant is a mentally challenged person and a decree is passed, then there is a danger of the decree being declared as null and void, if it is subsequently shown that the defendant is a mentally challenged person. In order to avoid any further complications, I am inclined to pass the following order:

*16.1 The order passed in I.A.No.2 of 2023 in
O.S.No.11 of 2023 dated 11.09.2024 is set aside;*

16.2 I.A.No.2 of 2023 is remitted to the file of



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the learned Principal District Judge at Thiruvarur;

16.3 Learned Principal District Judge at Thiruvarur shall refer the defendant to a Medical Board to be constituted by the Dean, Thanjavur Medical College Hospital, Thanjavur and obtain a report as to the mental capacity of the defendant;

16.4 In case, a report is submitted in favour of the defendant, then the learned Trial Judge should allow the guardian application. The cost for the medical examination shall be borne by the civil revision petitioner;

16.5 Insofar as the revision challenging the order setting the defendant exparte, the suit being one for specific performance of an agreement of sale which has been denied by the defendant as early as 25.01.2022, I deem it appropriate that an opportunity be granted to the defendant to contest the case. However, as the defendant has been responsible for the delay in the proceedings, which has now



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proceeded to the stage of recording of exparte evidence and pronouncement of judgment, I am inclined to allow the application in I.A. No.3 of 2023 on payment of costs;

*16.6 The order passed in I.A.No.3 of 2023 shall be set aside on condition, the civil revision petitioner pays a cost of **Rs.10,000/-** (Rupees Ten Thousand only) to the plaintiff within a period of four weeks from today. In case, the cost is not paid, C.R.P.No.270 of 2025 will stand dismissed without further notice to this Court;*

16.7 Prior to taking up the suit for further orders, the learned Trial Judge shall ensure that the order passed in C.R.P. No.5337 of 2024 referring the defendant to Medical Board is complied with.

*16.8 Report from the Medical Board shall be obtained within a period of **eight weeks** from the date of receipt of a copy of the order. As pointed out above, further proceedings in the suit shall depend*



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*upon the report that is submitted by the Medical
Board.*

17. The Civil Revision Petitions are allowed on the above terms. Insofar as C.R.P. No.5377 of 2024 is concerned, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

29.01.2025

Index:Yes/No
Neutral Citation:Yes/No
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To
The Principal District Judge,
Thiruvarur.

V. LAKSHMINARAYANAN,J.



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