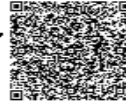


CR-7512-2019 (O&M)

2025:PHHC:041267



CR-7513-2019 (O&M)

119

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

**Date of decision : 26.03.2025
CR-7512-2019 (O&M)**

M/s Brothers Associates

..... Petitioner

versus

Bhagwan Dass & ors.

..... Respondents

CR-7513-2019 (O&M)

M/s Brothers Associates

..... Petitioner

versus

Bhagwan Dass & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

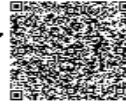
Present :- Mr. Akshay Jindal, Advocate
Mr. Bhavya Vats, Advocate
Mr. Vrishank Suri, Advocate and
Mr. Yashvardhan Goyal, Advocate
for the petitioner.

Mr. Saurabh Dalal, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

1 This order shall dispose off above mentioned two revision petitions.

2 Present revision petitions are directed against orders dated 20.09.2019 (Annexure P-1) whereby application filed under Order XXXII Rule 15 CPC by the petitioner-defendant No.4 seeking inquiry with respect to mental health of respondent No.1-plaintiff, before this Court, has been rejected.



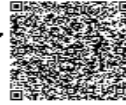
3 Plaintiff-respondent No.1 filed a suit wherein the petitioner was impleaded as defendant No.4. During the pendency of suit defendant No.4 filed an application under Order XXXII Rule 15 CPC seeking inquiry with respect to mental health of the plaintiff. Medical Board was constituted. Plaintiff was examined. The Board opined as under :-

“Mental status examination was conducted in which no major psychopathology was elicited. Intelligence assessment was done in which his IQ (Intelligence Quotient) came out to be 65 putting him in the category of mild mental retardation. The board is of the opinion that currently Bhagwan Dass s/o Sh. Dharam Singh is not suffering from any major psychiatric disorder apart from mild mental retardation.”

4 The said application was dismissed by the Trial Court vide order dated 05.11.2014 observing as under :-

“Today, I have also orally examined the plaintiff by putting certain general questions to him. The questions and the reply given by plaintiff have been reduced in writing. From the overall apprehension of the answers given by the plaintiff, I am of the opinion that plaintiff is not suffering from any mental abnormality by significant psychopathological disorder. Although, IQ of the plaintiff is not as good as that of another person of the same age but it is not so low as that of a profound mentally retarded person.

As per a report of American Association of Mental Retardation, mental retardation is a developmental disability which is defined as the intellectual function level. As per the report, a person having mild mental retardation can acquire good academic skills and become self-sufficient, and in some cases live independently with community and social support. The reasons for such mild mental retardation may be environmental factors like



ignored or neglected children who are not provided mental and physical stimulation required for normal development. The plaintiff appears to be a case of same nature and he cannot be termed as a case of mentally ill person. Mental retardation cannot be equated with mental illness or unsoundness of mind because mental retardation is incomplete development of mind of a person which is specially characterized by the sub-normality of intelligence.

In this regard, Hon'ble Supreme Court of India has also laid down distinction between the cases of 'mental retardation' and 'mental illness' in case titled as Sujita Srivastava and Anr. Vs. Chandigarh Administration, Civil Appeal No. 5845 of 2009 decided on 28.08.2009. In the words of the Hon'ble Supreme Court of India, mental retardation means a condition of arrested or incomplete development of mind of a person who is specially characterized by sub-normality and such persons are capable of living in normal social conditions even though they may need some supervision and assistance from time to time. The development below any mental intelligence should not be concluded with mental capacity. Therefore, to say that mental retardation of mild nature amounts to unsoundness of mind is not the correct approach.

Keeping in view the report submitted by Medical Board, the answers given by plaintiff to the general questions put to him during oral examination, I am of the considered opinion that the plaintiff can not be termed or declared as a person of unsound mind although his mental faculties have not developed equivalent to that of a person of same age. The plaintiff cannot be said to be incapable of protecting his interest in the suit."

5 The order was not assailed either by way of appeal or revision and attained finality with efflux of time. The suit was finally decreed vide judgment dated 23.02.2016. During the pendency of the appeal filed by petitioner before Appellate Court below, the instant application has been moved. The same stands rejected vide impugned order.



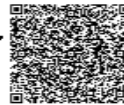
6 Learned counsel for the petitioner while assailing the impugned order has drawn the attention of this Court to the provisions as contained under Order XXXII Rule 15 CPC and submits that from the perusal of the opinion formulated by the Medical Board, it is evident that the plaintiff was suffering from mental retardation. However Trial Court substituted its own opinion and dismissed the application filed by the petitioner. In fact the plaintiff is being used for proxy litigation and the same is evident from fact that he himself never appeared in the witness box. He submits that it is in the interest of plaintiff that an opinion be formulated with respect to his mental health and Court must perform its duty as true guardian.

7 *Per contra* learned counsel for respondent No.1 submits that having suffered order dated 05.11.2014 petitioner opted not to assail the said order. In view of this, the second application raising same plea before the Appellate Court was not maintainable.

8 I have heard learned counsel for the parties and have gone through the records of the case.

9 In order to appreciate the rival contentions raised by the counsel for the parties it will be apt to peruse Order XXXII Rule 15 CPC, which reads as under :-

“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.”

10 It is matter of record that the Board after examining plaintiff found that he was not suffering from any major psychopathological disorder but at the same time opined that there was mild mental retardation. Trial Court conducted an inquiry on its own. Plaintiff was put to examination by the Court to ascertain his mental health. Having not found any mental abnormality in the plaintiff, the Trial proceeded and the application filed under Order XXXII Rule 15 CPC was dismissed. By now the trial already stands concluded. Decree stands passed in favour of the plaintiff. Meaning thereby, plaintiff successfully conducted *lis*. Thus in the considered opinion of this Court application filed under Order XXXII Rule 15 CPC at the stage of appeal could be hardly of any consequence.

11 In view of above, the present revision petitions are dismissed.

12 Before parting with the order, this Court finds that it is desirable that while ascertaining the mental health of a person, Medical Boards must also opine if possible, whether with the passage of time, the ailment, if any found is expected to worsen or examinee is likely to improve.

13 Photocopy of this order be placed on the connected file.

26.03.2025
Pooja Sharma-I

Whether speaking/reasoned:
Whether reportable:

(PANKAJ JAIN)
JUDGE

Yes/No
Yes/No