CGHC010296832022

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 585 of 2022

Order Reserved on – 22.07.2026

Order Pronounced on – 30.10.2026

Order Uploaded (full) on – 30.10.2026

Smt Abeda Bano W/o Md. Iliyas Khatri Aged About 43 Years Through Next Friend Md. Iliyas Khatri, S/o Late Shri Musa Hazi Usman, Dandkaren Press, Virindawan Colony, Jagadalpur, District : Bastar(Jagdalpur), Chhattisgarh

... Petitioner

versus

1 - Rajesh Surana S/o Shri Sheshmal Surana Aged About 52 Years R/o Dantewada, Dist - South Baster Dantewada, Chhattisgarh

2 - Smt. Sunita Surana W/o Shri Manoj Surana Aged About 40 Years R/o Dantewada, Dist - South Baster Dantewada, Chhattisgarh

3 - Md. Imran Nagariya S/o Md. Iqbal Nagariya Aged About 38 Years R/o Virindawan Colony, Jagadalpur Dist - Bastar, Chhattisgarh

4 - State Of Chhattisgarh Through Collector, Bastar, Dist - Jagdalpur, Chhattisgarh

... Respondents

For Petitioner	:	Mr. Ravindra Sharma, Advocate
For Respondents No. 1 & 2	:	Mr. Malay Jain and Mr. Sandeep Patel, Advocate
For Respondent No. 3	:	Mr. Vaibhav Goverdhan, Advocate
For Respondent No. 4	:	Mr. Anand Kumar Gupta, Dy. GA

Hon'ble Shri Justice Sachin Singh Rajput

CAV Judgment

1. The present writ petition has been filed under Article 227 of the Constitution of India, assailing the legality, correctness and judicial propriety of the order dated 04.08.2022 passed by the learned First Additional District Judge, Bastar

at Jagdalpur (hereinafter referred to as “the learned Trial Court”) in Civil Suit No. 01-A/2014.

2. For the sake of convenience, the plaintiffs shall hereinafter be referred to as the respondent Nos. 1 and 2, the defendant No.1 as petitioner and other defendants as respondents No. 3 & 4.

3. By the impugned order, the learned Trial Court rejected the application preferred by the petitioner under Order XXXII Rule 15 of the Code of Civil Procedure, 1908 (for short, *“the CPC”*) seeking appointment of a next friend to represent her in the proceedings.

4. The facts of the case in brief are that the respondent Nos. 1 and 2 instituted a civil suit before the learned Trial Court seeking specific performance of an agreement to sell, for declaring the sale deed dated 14.08.2012 as null and void and also for permanent injunction. According to the averments made in the plaint, the suit property comprises land bearing Khasra No. 79, admeasuring 1.21 hectares situated at Village Nektisemra, Patwari Halka No. 09, Tahsil Jagdalpur, District Bastar (C.G.) which stood recorded in the name of petitioner. It was pleaded that petitioner had acquired the suit property and was competent to transfer the same. It was further pleaded that petitioner had executed an agreement to sell dated 23.09.2010 in favour of the respondent Nos. 1 and 2 in respect of the suit property for a total sale consideration of Rs.12,08,000/- out of which Rs. 5,00,000/- was paid as earnest money, the receipt of which was duly acknowledged by petitioner in the agreement itself. Under the terms of the agreement, petitioner was required to obtain the requisite permission, procure diversion of the land, have it demarcated and execute a registered sale deed within three months. As petitioner and her

husband allegedly failed to take steps towards diversion of the land, the respondent Nos. 1 and 2 on enquiry from the Revenue Department came to know that no application for diversion had been submitted. Upon being confronted, petitioner and her husband allegedly assured the respondent Nos. 1 and 2 that the requisite diversion, demarcation and permission for sale would be obtained within three months and that the respondent Nos. 1 and 2 would be duly informed. However, the contractual obligations were not fulfilled. Consequently, the respondent Nos. 1 and 2 issued a registered legal notice dated 04.03.2013 expressing their readiness and willingness to purchase the suit property even without diversion. Despite receipt of the notice, petitioner and her husband allegedly failed to execute the sale deed. It was further pleaded that in March 2013, the respondent Nos. 1 and 2 received summons issued by the Court of the Third Civil Judge, Class-II, Bastar, in Civil Suit No. 3-A/2013. Upon receipt of the summons, the respondent Nos. 1 and 2 came to know that petitioner and her husband had instituted a suit seeking a declaration that the registered agreement to sell dated 23.09.2010 was null and void. In the said proceedings, petitioner was projected as a deaf and dumb person, and the execution of the agreement to sell was disputed. The petitioner filed an application under Order 32 Rule 15 of the CPC to ensure an enquiry as to the fact whether she was a person of unsound mind and as such incapable of protecting her interests because of mental infirmity. However, the said application came to be rejected by the order dated 04.08.2022. Hence this petition.

5. Learned counsel for the petitioner submits that the impugned order dated 04.08.2022 passed by the learned trial court is illegal, arbitrary and contrary to law as the application seeking appointment of a next friend was rejected

without conducting a preliminary inquiry into the ability of the petitioner to protect her interests in the proceedings. He submits that the petitioner being deaf and dumb by birth is unable to effectively communicate her wishes, views and thoughts before the Court and in the absence of an expert conversant with her mode of communication, the Court is also unable to comprehend her signs and gestures. He further submits that the learned trial court failed to consider whether the petitioner was capable of understanding and participating effectively in the judicial proceedings without the assistance of a next friend. He further submits that the learned trial Court has erred in considering whether the petitioner is capable of protecting her interests in the proceedings and in rejecting the application without conducting an inquiry as contemplated under Order XXXII Rule 15 of the CPC. Therefore, it is submitted that the rejection of the application without assessing the petitioner's actual capability and the necessity of expert assistance is unsustainable in law. Accordingly, he prays that the impugned order may be set aside. In support of his submissions, learned counsel for the petitioner placed reliance upon the judgment of Division Bench of Hon'ble High Court of Kerala in the matters of **Raveendran Vs. Sobhana** reported in **2008 AIR(Ker) 145** and **Mary Vs. Leelamma; AANI** reported in **2020(4) KerLT 242.** He also placed reliance upon the judgment of Division Bench of Hon'ble Supreme Court in case of **Kasturi Bai and others Vs. Anguri Chaudhary** reported in **AIR 2003 Supreme Court 1773.**

6. Per contra, learned counsel for the respondents No. 1 & 2 opposed the submissions advanced on behalf of the petitioner. He submits that the petitioner is neither a person of unsound mind nor mentally infirm and, therefore, the mere fact that she is deaf and dumb does not necessitate the appointment of a next friend under Order XXXII Rule 15 of the CPC. He

further submits that the petitioner is educated, capable of communicating through written means and has independently undertaken various legal and financial transactions including execution of registered sale deeds and an agreement to sell as well as contesting proceedings before the revenue authorities through counsel. He further submits that the petitioner has not pleaded any mental infirmity rendering her incapable of protecting her interests and that the learned trial Court after considering the material available on record and her past conduct rightly rejected the application. He submits that they have no objection to the petitioner's husband assisting her in the proceedings through a duly executed power of attorney, but his appointment as a next friend may prejudice their interests in the pending suit. Accordingly, it is prayed that the writ petition may be dismissed. To bolster his submissions he placed reliance upon the judgment of the Supreme Court in ***State of Rajasthan v. Darshan Singh alias Darshan Lal*** reported in **(2012) 5 SCC 789**; the judgment of the Kerala High Court in ***Raveendran v. Sobhana & Anr.*** reported in **2007 SCC OnLine Ker 164**; the judgment of the Allahabad High Court in ***Arjun v. Deputy Director of Consolidation and Others,*** reported in **2019 SCC OnLine All 3587**; the judgment of the Madhya Pradesh High Court in ***Alka w/o Akash Jain v. Akash s/o Krishan Kumar Jain*** reported in **(2010) 2 MP LJ 72**; and the judgment of this Court in ***Sanjay Kedia v. Akash s/o Saroj Kedia & Others*****, passed in C.R. No. 212 of 2025, vide order dated 25.09.2025**.

7. Learned counsel for the respondent No. 4/State submits that the dispute is between the private parties and state is only formal party.

8. I have heard the learned counsel for the parties and perused the record with utmost circumspection.

9. The principal question to be determined by this Court as to whether that the approach of the learned trial Court in rejecting the application under Order XXXII Rule 15 CPC is legally justified?

10. This Court has taken note of all the aspects of the matter culled out from the material available on record. The agreement in question to sale was entered into between the petitioner and the respondents No. 1 & 2 in respect of the suit land. However as the sale deed remained un-executed till 2014 in spite of all the efforts made by the respondent Nos. 1 and 2 including readiness and willingness, they instituted a civil suit seeking specific performance of the contract. Thereafter, the petitioner filed an application to appoint her husband as a next friend on account of her being incapable to put forth her case. To substantiate her physical infirmity of being deaf and dumb, she has placed on the case file the medical papers as well. This Court does not question her physical infirmity but the fact remains whether this infirmity precludes her from defending her case. One important thing that needs to mention in this case is that subsequently she entered into another agreement with some different person in connection with sale of parcel of the suit land. The record also discloses that she is a well educated woman and had entered into several transactions before this case being set in motion. This also indicates that she is able to comprehend the pros and cons of the transactions being undertaken by her. Under the provisions of Section 119 of Indian Evidence Act, 1872, deaf and dumb person is also a competent witness. Not even a whisper has been brought forth to suggest that she suffers from unsoundness of mind or any debilitating mental faculty.

11. To make the things easily comprehensible, it appears to be relevant to reproduce Order XXXII Rule 15 CPC which is 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 or being sued."

12. A perusal of the aforesaid provision makes it abundantly clear that while deciding an application under Order XXXII Rule 15 of CPC, the Court cannot act mechanically merely on assertions made in the pleadings. The provision mandates that the Court must conduct an enquiry to satisfy itself whether the petitioner for whom appointment of a guardian or next friend is sought, is in fact suffering from such mental or physical infirmity that she is incapable of protecting her own interest in the litigation. The underlying object is to ensure that no person is deprived of the conduct of her case unless the Court, upon due enquiry, finds her legally incompetent to prosecute the proceedings. However, when the things speak for themselves making it crystal clear that the person concerned is not suffering from any mental illness, the judicial time should not be put at stake, as is the case in hand. It is for the reason that right from the beginning, the petitioner has never taken a plea that she is suffering from any mental ailment. What she has asserted is that being deaf and dumb she was having physical deformity to that extent only. This apart, the conduct of the petitioner where she ventured into many transactions including entering into an agreement and then executing the sale deed also depicts that she was not suffering from any unsoundness of mind. From the documents on record it also transpires that she was operating the Pan Card issued under her own name and was well educated woman and being so if not orally in the wake of her so

called physical deformity, she could have defended herself by presenting her case in writing. Even otherwise, she had engaged an advocate right from the beginning and therefore also it cannot be said that except appointment of a next friend to defend her, there was no other way out for her to do so.

13. Of course from the relevant provision it appears that an enquiry is required to be conducted, however, that provision does not specify the nature or manner of such enquiry. In the matter of **Kasturibai (supra)**, the Supreme Court while dealing with an identical issue has categorically held that if a person on inquiry is found to be incapable of protecting his or her interest when suing or being sued by reason of any mental infirmity, an appropriate order thereunder can be passed. Since the petitioner has not produced any material to show that by dint of her mental deformity she was not in a position to defend herself in the civil suit, there does not appear to be any need to unnecessary venture into holding an inquiry and thereby procrastinating the litigation.

14. In the case in hand, what transpired from the material on record is that the petitioner was suffering from hearing and speech impairment and to deal with such persons there is a specific provision under Section 119 of the Indian Evidence Act which for ready reference is reproduced as under:

> “119. Witness unable to communicate verbally. who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:
>
> Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed."

15. Upon consideration of the submissions advanced and the materials available on record, this Court finds that the petitioner's deafness and inability to speak, by themselves, do not render her incompetent to participate in the proceedings of the civil suit. A person suffering from such a disability cannot be presumed to be incapable of protecting her interests in legal proceedings. The petitioner can well communicate her instructions in writing, through gestures or with the assistance of an interpreter as may be required and can avail herself of the services of a counsel of her choice which she has been already doing. Not only this, she can also take assistance from her husband so as to assist her in so communicating. However, it needs clarification that such assistance by itself does not *ipso facto* furnish a ground for appointing her husband as the next friend under Order XXXII Rule 15 of the CPC as such appointment must satisfy the requirements of the aforesaid legal parameters and mere existence of a disability absolutely of physical character does not dispense with the necessity of establishing the statutory conditions for such appointment.

16. While grappling with the matter in hand, this Court went through the citations submitted by the counsel for the petitioner with utmost industry but since the factual backdrop of those cases and the present one are materially distinct, the same do not rush to the rescue of the petitioner.

17. The aforesaid critical analysis does not make any disclosure on the basis of which this Court can feel it to be a sufficient ground for granting the relief sought by the petitioner. As already stated, her past conduct in being actively involved in numerous transactions or proceedings in her individual capacity may be a relevant circumstance in assessing her unquestionable ability to protect her interests, however, the question of her competence must ultimately be determined in accordance with the applicable legal provisions and the material on record. The petitioner cannot claim the appointment of her

husband as her next friend in a routine manner in the absence of the requisite satisfaction under Order XXXII Rule 15 of the CPC. In the facts and circumstances of the case, this Court finds no sufficient ground to interfere with the proceedings of the civil suit or to grant the relief sought in the present writ petition. The approach of the trial Court resulting in rejection of the application under Order XXXII Rule 15 of CPC does not in any manner appear to be at fault and being so the order impugned is left undisturbed.

18. Consequently, the writ petition, being devoid of merit, is dismissed. There shall be no order as to costs.

Sd/-

(Sachin Singh Rajput)

Judge

H.Ansari/J.

AVANISH JYOTISHI

Digitally signed by AVANISH JYOTISHI
Date: 2026.10.30 17:13:50 +0530