

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

MONDAY, THE 21<sup>st</sup> DAY OF AUGUST 2023 / 30TH SRAVANA, 1945

CRP NO. 110 OF 2017

AGAINST THE ORDER DATED 26.11.2016 IN I.A.No.2245/2014 IN OS  
467/2014 OF PRINCIPAL MUNSIF COURT, NEDUMANGAD

REVISION PETITIONER/1<sup>st</sup> COUNTER PETITIONER/1<sup>st</sup> DEFENDANT:

GOPAKUMAR, S/o KRISHNAN NAIR,  
[REDACTED]

BY ADV SRI.G.S.REGHUNATH

RESPONDENTS/COUNTER PETITIONERS 1 & 3/ PLAINTIFFS & 2ND DEFENDANT:

1 MADHUSOODANAN NAIR, S/o KRISHNA PILLAI,  
[REDACTED]

2 SREE KUMARAN THAMPI, S/o KRISHNA PILLAI,  
[REDACTED]

BY ADVS. SHRI.AJIT G ANJARLEKAR  
SMT.M.SANTHI  
SRI.G.RANJU MOHAN  
SRI.GOVIND PADMANAABHAN  
SRI.G.P.SHINOD

THIS CIVIL REVISION PETITION HAVING COME UP FOR HEARING ON  
21.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

O R D E R

What is the scope of 'enquiry' as contemplated under Rule 15 of Order XXXII CPC is the main question came up for consideration. A suit was instituted by a mentally unsound person, through a next friend, as mandated under Order XXXII CPC. During the pendency of the suit, the original plaintiff, the alleged mentally ill person, came up with an application in I.A.No.2245/2014 expressing his non-willingness to proceed with the suit. Thereon, the trial court conducted an 'enquiry' as to the mental capacity, by putting certain questions to the person who was present in court and recorded the same along with the answers given and found that certain answers were not rational, hence found that he is incapable of doing his affairs due to mental incapacity. Consequently, the application was dismissed. It is against that order, the first defendant came up in revision.

2. In order to bring up a suit under Rule 15 of Order XXXII CPC, there should be an enquiry as mandated, as to find out the alleged mental infirmity and incapacity to protect the interest of any person, who put the law in motion through next friend or a court guardian. The appointment of a court guardian or grant of permission to sue through a next friend without conducting an enquiry as mandated under Rule 15 cannot be sustained, as the compliance of requirement under the said Rule is mandatory and the legal position was very much settled by the Apex Court in **Kasturibai and others v. Anguri Chaudhary [(2003) SCC 225]**. It is by virtue of Rule 15, the provisions dealing with the institution of suit through a next friend or appointment of guardian to a minor enumerated under Rule 1 to 14 is made applicable to two sets of persons namely 'a person adjudged of unsound mind' and 'a person incapable of protecting his interest by reason of any mental infirmity'. Both are different though there may be some overlapping. The first limb 'a person adjudged of unsound mind' stands for a person who have been adjudged

of unsound mind and it is clear from the wording used 'a person adjudged of unsound mind' which stands for an adjudication rendered in a judicial inquisition by the competent court or the authority, as the case may be. The expression 'adjudged' incorporated under Rule 15 hence stands for a judicial inquisition and the determination thereof under the provisions of Indian Lunacy Act, 1912 (Section 41) which was subsequently substituted by the Mental Health Act, 1987 (Section 50) and at present by Mental Healthcare Act, 2017. Under the Indian Lunacy Act, 1912, the Mental Health Act, 1987 and the Mental Healthcare Act, 2017, a person suffering from mental retardation or a mentally retarded person is excluded from its operation under the definition 'mentally ill person' and 'mental illness' presumably on the reason that what is contemplated under the abovesaid Acts is a judicial inquisition pertaining to mental illness/lunacy/unsoundness of mind/insanity other than mental retardation. The corollary is that the first limb of Rule 15 would come into operation only when there is an adjudication under an inquisition proceeding by a

competent court/authority adjudging a person to be of unsound mind before or during the pendency of the suit and the court is bound to accept such adjudication under the first limb of Rule 15 of Order XXXII CPC so as to grant permission to sue as next friend or to appoint a court guardian, wherein there is no scope for any enquiry or to interfere with any adjudication rendered under an inquisition proceeding by the court. The only question that can be considered under the first limb is whether there is any adjudication under a judicial inquisition regarding unsoundness of mind, lunacy, insanity of a particular person. The decision rendered by the Apex Court in **Kasturibai's** case (supra) has to be distinguished as applicable only to the second limb of Rule 15 which would come into play in the absence of any such adjudication on a judicial inquisition. When there is no such adjudication, the matter would fall under the second limb of Rule 15 of Order XXXII CPC which empowers the court to go into each and every question of incapability to protect the interest of a particular person by reason of any mental infirmity

which is so wide enough and includes a case of mental retardation, mental ailment or any other mental disorder to the extent of making that person incapable of protecting his interest or to take a rational judgment, besides a person of unsound mind/insanity/lunacy. The user of the word 'found by the court on enquiry' is applicable only in relation to the second limb of Rule 15 of Order XXXII CPC which empowers the court to conduct an enquiry so as to satisfy itself regarding the incapacity on account of any mental infirmity.

3. It is too adventurous for the courts to arrive at a conclusion under the second limb of Rule 15 merely on the reason that some of the answers which were given on examination of the person were not found to be rational. What has to be tested under the second limb involves the mental incapacity on account of any mental ailment or disorder which would include a question of insanity, complete impairment, unsoundness of mind etc. Hence, the court should adopt a pragmatic approach and if it is found necessary, call for further evidence including medical evidence, instead of jumping into a conclusion

merely on the ground that some of the answers which were given by the person were found to be not convincing or rational. The procedure, then available, is to refer the parties to a Medical Board so as to obtain a report regarding any mental ailment, retardation or disorder or any impairment of mental ability to take a rational decision pertaining to his affairs or to protect his interest. The extensive jurisdiction vested with the court under Order XXXII CPC was elaborately considered by a three Judge Bench of Apex Court in **Sharda v. Dharmpal [(2003) 4 SCC 493]** and laid down that:-

*"50.....The prime concern of the court is to find out as to whether a person who is said to be mentally ill could defend himself properly or not. Determination of such an issue although may have some relevance with the determination of the issue in the lis, nonetheless, the court cannot be said to be wholly powerless in this behalf. Furthermore, it is one thing to say that a person would be subjected to a test which would invade his right of privacy and may in some case amount to battery; but it is another thing to say that a party may be asked to submit himself to a psychiatrist or psychoanalyst so as to enable the court to arrive at a just conclusion. Whether the party to the marriage requires a treatment or not can be found out only in the event, he is examined by a properly qualified psychiatrist. For the said purpose, it may not be necessary to submit himself to any blood test or other pathological tests.*

*51. If the court for the purpose envisaged under Order 32 Rule 15 of the Code of Civil*

*Procedure or Section 41 of the Indian Lunacy Act can do it suo motu, there is no reason why it cannot do so on an application filed by a party to the marriage.*

*52. Even otherwise the court may issue an appropriate direction so as to satisfy itself as to whether apart from treatment he requires adequate protection inter alia by way of legal aid so that he may not be subject to an unjust order because of his incapacity. Keeping in view of the fact that in a case of mental illness the court has adequate power to examine the party or get him examined by a qualified doctor, we are of the opinion that in an appropriate case the court may take recourse to such a procedure even at the instance of the party to the lis.*

*53. Furthermore, the court must be held to have the requisite power even under Section 151 of the Code of Civil Procedure to issue such direction either suo motu or otherwise which, according to him, would lead to the truth."*

4. In the instant case, no judicial inquisition proceedings were initiated and no adjudication was rendered adjudging the plaintiff/petitioner as a person of unsound mind. Hence, the matter would fall under the second limb of Rule 15 of Order XXXII CPC wherein the mandate of conducting an enquiry and rendering a finding cannot be avoided. Necessarily, mere questioning of the petitioner/plaintiff by the court and recording of answers alone is not sufficient to comply with the requirement of an enquiry as mandated under the second limb of Rule 15 of Order XXXII CPC. But, that does not

mean that there should be a judicial inquisition by a competent authority/court as a condition precedent to proceed under Order XXXII CPC either to permit a next friend to sue on behalf of that person or to appoint a court guardian. But, there should be a pragmatic approach on the part of the court to satisfy the requirement and the need for which the paramount consideration should be for protecting the interest of the person concerned as that of a minor.

5. In the instant case, no such enquiry was conducted by either referring the petitioner to a Medical Board or for an expert evidence or by calling upon medical records, if any available, but simply jumped into a conclusion on examination of the petitioner by the court and found that he is not capable of protecting his interest simply on the reason that certain answers were found to be not rational. Further, the answers given asserting religious beliefs cannot be said irrational for the purpose of Order XXXII CPC, hence liable to be set aside. I do so.

6. At the fag end it is submitted that the

original plaintiff passed away after the disposal of the said application. It is up to the legal heirs to be impleaded in the suit, if they are desirous of continuing the suit, but subject to the law of limitation and the application of Section 5 of the Limitation Act. Hence, it is left open. The authority to proceed with the suit under Order XXXII CPC through the next friend would come to an end on the death of the original plaintiff, unless the next friend step into the shoes of original plaintiff either by intestate succession or testamentary succession or otherwise.

CRP will stand allowed accordingly.

sd/-  
**P . SOMARAJAN**  
**JUDGE**

DMR/-