THE HON'BLE SMT. JUSTICE K. SUJANA

CIVIL REVISION PETITION NOS.2890 AND 2766 OF 2022

COMMON ORDER:

C.R.P.No.2890 of 2022 is filed challenging the order dated 15.10.2022 passed in I.A.No.245 of 2022 in O.P.No.1142 of 2019 by the Judge, I-Additional Family Court, Hyderabad.

2. C.R.P.No.2766 of 2022 is filed challenging the order dated 15.10.2022 passed in I.A.No.247 of 2022 in O.P.No.1164 of 2021 by the Judge, I-Additional Family Court, Hyderabad.

3. O.P.No.1142 of 2019 is filed by the petitioner herein seeking declaration, mandatory injunction and perpetual injunction against the 1st respondent herein. I.A.No.245 of 2022 in O.P.No.1142 of 2019 is filed by the 1st respondent herein who is the petitioner in the said I.A., under Order XXXII Rule 3 of Code of Civil Procedure to take off the petition with cost to be paid by the pleader in O.P.No.1142 of 2019 as the suit is instituted on behalf of an insane without appointment of next friend.

4. I.A.No.247 of 2022 in O.P.No.1164 of 2021 is also filed by the 1st respondent herein who is the petitioner in I.A.No.245 of 2022, under Order XXXII Rule 3 of Code of Civil Procedure to pass an order to appoint the father of respondent therein as guardian to him. O.P.No.1164 of 2021 is filed by the 1st respondent herein seeking divorce on the ground of cruelty and mental insanity of the respondent therein. Both the orders are challenged by the petitioner-husband stating that the trial Court failed to see that the petition filed under Order XXXII Rule 2 r/w.Rule 15 of C.P.C, is neither maintainable in law nor on facts. The same is applicable only for minor and Rule 15 of C.P.C, specifically states that incapability of a person can be declared by the Court only after conducting enquiry and the order of trial Court suffers from irregularity as there is absolutely no enquiry conducted by the trial Court regarding mental infirmity of the petitioner and there is no application of mind in the said order. The trial Court without looking into the nature of document titled as acknowledgement has wrongly construed the same to be a certificate and as such proceeded to pass the impugned order and there are no reasons stated in the counter affidavit in I.A.No.245 of 2022 that no legal guardian need to be appointed to the petitioner as he is not declared as

disabled person by any competent authority and the trial Court has failed to either refer the petitioner to a registered medical practitioner for psychological analysis or even satisfy itself based on any medical report or evidence and mistakenly taken the acknowledgement copy of disability Certificate issued by the Department of Empowerment of persons with disabilities, Ministry of Social Justice and Empowerment, Government of India as certificate issued by the authority. Even if, petitioner himself admits that he is suffering with Bipolar disorder, the trial Court is bound to enquire before coming to the conclusion as per law, contemplated under order XXXII Rule 15 of C.P.C. The order of trial Court is illegal as there is no enquiry conducted before coming to conclusion that petitioner is of unsound mind and the order is liable to be set aside.

5. I.A.No.245 of 2022 is filed by the wife to take off the petition with costs to be paid by the pleader in the O.P.No.1142 of 2019 as the suit is instituted on behalf of insane without next friend. In the said I.A., it is averred that O.P.No.1142 of 2019 is filed seeking declaration, mandatory injunction and perpetual injunction against the respondent therein. The respondent therein filed counter denying the averments and filed

application and certificate issued by the Department of Empowerment of Persons with Disabilities, declaring the respondent therein as a person with mental illness since the year 2000 and appointed his father Shivcharan J.Agarwal as his guardian. The Family Court, Chaibasa in matrimonial suit Number 4 of 2014, observed as follows :

> "Thus, it is apparent that petitioner Anurag Agarwal is suffering from Psychopathic disorder i.e., bipolar ailment and the respondent, i.e., Anurag Agarwal himself admitted that "she collected all her belongings including her jewelries and packed them to transfer the same to Hyderabad at her residence. The petitioner (Anurag) also accompanied to Hyderabad because respondent (Puruhuta) was travelling with ornaments. For the safety of the Jewelries, the petitioner (Anurag) requested the Indian Bank, Begumpet Branch at Hyderabad to provide locker facility. On insistence of the respondent (Puruhuta), the locker was opened in the name of respondent (Puruhuta) as primary/main hirer and petitioner (Anurag) was a joint hirer, either of them could operate. The respondent (Puruhuta) was left with the keys of the lockers".

6. The counter claim and reply to counter claims were filed stating that both the locker keys were in the possession of Anurag Agarwal till 30.01.2015 and due to his unstable mind he wrote a letter to Indian Bank stating that he wants to withdraw his name as joint holder from both the lockers and on 07.04.2015 he wrote another letter to the Indian Bank stating

that on 29.01.2015, he was forced to surrender the said lockers in favour of his wife. The statement of the respondent therein clearly shows that he was in depressed state of mind due to bipolar disorder and he produced the certificate issued by a competent doctor. As such, it is just and proper to appoint the father of respondent therein as guardian to him.

7. The respondent therein filed counter stating that the said petition is not maintainable and the same is liable to be dismissed. The petitioner therein filed divorce O.P., and also an application seeking maintenance. He also filed counter along with the certificate issued by the Department of Empowerment of persons with disabilities, Ministry of Social Justice and Empowerment, Government of India which declared the respondent therein as a person with mental illness and appointed his father as his guardian. It is stated that he never concealed his bipolar disorder to the petitioner prior to his engagement and her family members are also aware of the same. He further admitted that the Principal Family Court, Chaibasa, in its order made observations regarding bipolar disorder but the same is not binding on this Court to attain finality. The certificate issued is regarding mental illness, but

not of unsound mind. Order XXXII of C.P.C, is applicable to persons adjudged as unsound by the competent Court on enquiry and no way he is declared as unsound by any competent Court of law and the bipolar disorder does not lead to unsoundness of a person. The bipolar disorder is a disorder but not a disease and it is curable. The respondent therein is a qualified person having three Bachelors degree i.e., B.Com, B.MassCom, L.L.B. and two Masters degree in M.A.English Literature and L.L.M. Constitutional Law with distinction and scored first division. He is also a registered legal practitioner defending his clients before various Courts. He further submitted that the Hon'ble Supreme Court also observed that mental illness differs from unsoundness of mind. Mental illness is a mental condition while unsoundness of mind is a legal finding. The mental illness is neither necessary nor sufficient for a finding of unsound mind. The Hon'ble Supreme Court observed that a person who is suffering from bipolar disorder can be appointed as a Judge, in the Indian Judiciary. The trial Court after considering the versions of both the parties, came to the conclusion that bipolar disorder is not a curable disease and appointed his father as guardian. In both these revisions, the petitioner is challenging the order passed by the trial Court in

I.A.No.245 of 2022 and I.A.No.247 of 2022 wherein, the father of the respondent therein was appointed as legal guardian.

8. Heard Sri Apurva M.Gokhale, learned counsel for the petitioner and Sri Sunil B. Ganu, learned Senior Counsel appearing for the 1st respondent.

9. The contention of learned counsel for the petitioner is that the trial Court without proper enquiry decided the petitioner herein as unsound mind person. The trial Court has to hear the petitioner, conduct proper enquiry before declaring him as unsound person and he was not sent to medical institution to conclude that he is an unsound person. Learned counsel for the petitioner relied on the judgments in **Mahanthi Bhavani Shankar Vs Karubothu Muthyalamma[1], Duvvuri Rami Reddi Vs Duvvudu Papi Reddy and others[2], Akanksha Singh Vs High Court of Delhi & Others[3], G.V.Lakshminarayanan and others Vs G.V.Nagammal and Others[4], C.S.Navamani Vs**

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[1] MANU/AP/0660/2020
[2] AIR 1963 AP 160
[3] CIVIL APPEAL NO9.6113/2021
[4] AIR 2007 MAD 231

C.K.Sivasubramanian[5]. Hence, prayed the Court to set aside the impugned orders.

10. On the other hand, learned counsel for the 1st respondent would submit that petitioner himself admitted that he is suffering with bipolar disorder and in the counter filed in the maintenance case, he took the shelter of mental disease. As such, when there is an admitted fact, it need not be proved under Section 58 of the Indian Evidence Act. Learned counsel relied on the judgment in **Mary Vs Leelamma and Others**[6] **and Raveendran Vs Sobhana and others**[7]. There are no infirmities in the order of trial Court and there are no merits in these revisions and prayed the Court to dismiss these revision petitions.

11. Having regard to the submissions made in both the revisions and the material on record, the only contention of learned counsel for the petitioner is that he was declared as unsound person without conducting proper enquiry. The

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[5] 2006-4-L.W.393
[6] 2020 (4) KLT 242
[7] 2007 SCC Online Ker 164

further contention is that bipolar disease is not a disease and it is only mental illness but not unsound mind.

12. After going through the said contentions, the contention of learned counsel for the petitioner is that petitioner is having three Bachelors Degree and two Masters Degree. If he is of unsound mind person, he cannot complete the said Degrees. Further, petitioner is a practicing advocate and defending his clients. As such, there is no need to appoint his father as guardian.

13. A perusal of the record shows that petitioner filed divorce petition in the Family Court, Chaibasa and in the said order, the Court made observations regarding his bipolar disorder. Further petitioner's father has filed an application before the said authority to declare the petitioner as an unsound mind. The petitioner has also filed a suit vide O.P.No.871 of 2018 for declaration of Indian Bank lockers 35 and 517 in his name and obtained an ex parte injunction order not allowing operation of the lockers to the respondent. Thereafter, petitioner has filed O.P., for child custody vide G.W.O.P.No.617 of 2019, wherein the respondent No.1 has filed for interim maintenance for the child welfare and later petitioner withdrew the said G.W.O.P., to

avoid payment of maintenance for the child welfare. It is also observed that the petitioner in his counter in the amendment petition has filed person with disability registration document declaring himself as mentally ill person and pleaded the Court his incompetence to pay the maintenance. As such, the petitioner herein is suffering with bipolar disorder and he also took the shelter of the said disease in the maintenance case and now the petitioner cannot challenge the order of trial Court that he is not an unsound mind, that the trial Court did not enquire and did not send him to the doctor.

14. However, in the judgment relied on by the learned counsel for the petitioner in **Duvvuri Rami Reddi's** case, the High Court of Andhra Pradesh, in para 22, laid down certain principles, to declare a person as unsound mind, which reads as under :

(1) Order XXXII, R. 15 of the CPC places persons of unsound mind or persons so adjudged in the same position as minors for purposes of Rules 1 to 14.

(2) Order XXXII R. 15 of the CPC applies not only to a person adjudged to be of unsound mind, as under the old Code, but also to a person of weak mind.

(3) Where it is alleged that a party to a suit is of unsound mind, and the other party denies it, the Court must hold a Judicial inquiry, and come to a definite conclusion, as to whether by reason of the unsoundness of mind or mental infirmity, he is incapable of protecting his interests in the suit.

(4) Mental Infirmity may even be due to physical defects, if it renders him incapable of receiving any communication, or of communicating his wishes or thoughts to others.

(5) Whether a person is of unsound mind or mentally in firm for the purpose of the rule and the extent of the infirmity has to be found by the Court on inquiry.

(6) Where the question of unsoundness of mind arises not only under O. XXXII, R. 15 of the CPC but is also one of the issues in the suit, the Court has ample jurisdiction to enquire into that question, and for that purpose seek medical opinion.

(7) The enquiry should consist not only of the examination of the witnesses produced by either party, but also of the examination of the alleged lunatic by the Judge, either in open court or chambers, and as Courts are generally presided over by lay-men, as a matter of precaution, the evidence of medical expert should be taken.

(8) Of course, the opinion, of a doctor, as is the opinion of any other expert, under Section 45 of the Evidence Act, is only a relevant piece of evidence.

(9) The Court may also compel the attendance of the alleged lunatic before it, and to submit himself for medical examination. If the alleged lunatic is in custody, the Court may direct the next friend or any other person having custody to produce him before the medical expert for examination.

(10) Where the precaution of judicial enquiry is not observed, the person cannot be declared lunatic, and a guardian cannot be appointed for him.

(11) When a person is adjudged a lunatic irregularly and improperly, and notice was not served on him, and a guardian alone was allowed to appear and defend the suit and decree was passed owing to the guardian not putting up a proper defence, the alleged lunatic can treat the decree against him as an ex parte decree, and have it set aside under O. IX R. 13 of the CPC.

15. In matters involving persons of unsound mind, the Court must exercise utmost caution and diligence to ensure that the rights of such individuals are protected. Order XXXII, Rule 15 of C.P.C places persons of unsound mind or persons so adjudged

in the same position as minors for purposes of Rules 1 to 14. When a party to a suit alleges that the opposing party is of unsound mind, the Court must conduct a judicial inquiry to determine whether the alleged person is indeed incapable of protecting his interests in the suit. This inquiry should consist of examining witnesses, the alleged lunatic, and seeking medical expert opinion. The Court's inquiry should not be limited to determining whether the person is of unsound mind but also extend to assessing the extent of their mental infirmity. Mental infirmity may arise from physical defects that render the person incapable of communicating their wishes or thoughts. However, the opinion of a medical expert is also relevant, it is not conclusive. The Court must consider all evidence presented, including the expert's opinion, to arrive at a decision. The Court may compel the attendance of the alleged lunatic before it and direct them to submit to a medical examination.

16. Failure to conduct a judicial inquiry and adhere to the prescribed procedure may result in the person being improperly declared a lunatic. In such cases, the alleged lunatic may treat any decree passed against them as an ex parte decree and seek to have it set aside under Order IX, Rule 13 of C.P.C. The Court

must exercise extreme caution when dealing with cases involving persons of unsound mind. A thorough judicial inquiry, adherence to the prescribed procedure, and consideration of all relevant evidence are essential to ensure that the rights of such individuals are protected.

17. Further, the judgment relied on by the petitioner in **Mahanthi Bhavani Shankar's** case, the Court held as under :

> "31. .... procedure prescribed under Order 32, Rule 15 of C.P.C., it is clear that the Court should satisfy on enquiry that the plaintiff is of unsound mind before declaring him/her so and permitting the guardian to come on record. As such, there is some substance in the contention of the learned counsel for the petitioner that the Court below has to call and see the person and examine her to clear doubt about the health condition. Therefore, this Court is of the opinion that the Court below committed mistake in not examining the mother of the petitioner personally before appointing the petitioner as guardian, next friend.
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> 32. Here it has to be borne in mind that the enquiry should consist not only of the examination of the witnesses produced by either party, but also of the examination of the alleged lunatic by the judge, either in open court or chambers as held in Duvvuri Rami Reddi's case (supra). In the present case, this procedure was not followed and the Court below failed to atleast see the mother of the petitioner. As such, this Court is of the

> opinion that the Court below committed mistake in not examining the mother of the petitioner personally before appointing the petitioner as guardian, next friend."

18. As per the above judgment, the Court must conduct an inquiry to determine whether a person is of unsound mind before declaring them so and permitting a guardian to come on record. This is in accordance with Order XXXII, Rule 15 of C.P.C. The inquiry should include the examination of witnesses produced by either party, as well as the examination of the alleged person of unsound mind by the judge, either in open court or chambers. As such, decision to appoint the petitioner as guardian and next friend without conducting a proper inquiry was set aside and the matter is remanded to the Court below to conduct a fresh inquiry in accordance with the provisions of Order XXXII, Rule 15 of C.P.C. Further, in **Mary's** case, it is observed that facts are different and next friend application was filed while filing suit itself and after taking composite statement, the petition was allowed. Further, in that judgment opponent opposed appointment of next friend, whereas, in the present case, trial Court decided the application without examining the person on whose behalf next friend was appointed. Therefore, facts of the judgment relied on by the 1st

respondent are different from the present case. Further, the judgment relied on by the 1st respondent in **Raveendran's** case, in para 11 it is observed as under :

> "**10.** The decision under Order 32 Rule 15 involves very serious consequences as it results in the rights of a party to conduct his own litigation being taken away, and a guardianship being thrust upon him. In such circumstances, the Court has not only the mandatory jurisdiction to enquire into the need for appointment of a next friend, but also the obligation to consider whether the person of unsound mind or of mental infirmity appearing before it is indeed capable of protecting his interests. If that person is not capable of protecting his interests on his own, the Court has an obligation to protect his interests by appointing a next friend and if such person is capable of protecting his own interests, the Court has equally an obligation to see that a next friend or guardian is not superimposed on him, thereby depriving him of his right to take his own decisions. In the decision reported in *S.C. Karayalar* v. *V. Karayalar* (1968 (2) MLJ 150): (AIR 1968 Mad 346), it was held that holding of an enquiry under Order 32 Rule 15…." is thus inescapable and consent cannot vest jurisdiction in Court to dislodge or divest the right of a litigant to conduct his suit, by superimposing a guardian or a next friend."

19. Coming to the present case, the next friend is appointed without conducting any enquiry. Appointment of next friend is not in dispute, whereas, Court has to examine the party on whose behalf next friend is appointed. Therefore, the said judgment is not applicable to the present case.

20. In view of the observations made in the above judgments, in the present case also, the trial Court did not conduct any inquiry to determine whether petitioner is of unsound mind before declaring him so and permitted his father to represent on his behalf and did not follow the provisions of Order XXXII Rule 15 of C.P.C. The trial Court also did not send him for examination by the medical officer. As such, the orders impugned are not sustainable and the same are liable to be set aside.

21. Accordingly, both the Civil Revision Petitions are allowed by setting aside the order dated 15.10.2022 passed in I.A.No.245 of 2022 in O.P.No.1142 of 2019 and I.A.No.247 of 2022 in O.P.No.1164 of 2021 by the Judge, I-Additional Family Court, Hyderabad. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

K. SUJANA, J

Date :10.12.2024
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