

Smt.Chitra Vs. Anil Kumar

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Court : Madhya Pradesh

Decided On : Feb-27-2013

Appellant : Smt.Chitra

Respondent : Anil Kumar

Advocate for Def. : Shri. Ashok Lalwani

Advocate for Pet/Ap. : Shri. K.B.Bhatnagar

Judgement :

Writ Petition No :

12393. / 2012 Smt.

Chitra versus Anil Kumar and others 27.02.2013.

Shri K.B.Bhatnagar for the petitioner.

Shri Ashok Lalwani for respondent Nos.1 to 7.

Shri Sanjeev Kumar Singh, Panel Lawyer, for the State/respondent No.9.

Challenging an order-dated 17.7.2012 passed by the 5th Civil Judge Class II, Mandla in Civil Suit No.49-A/2012, rejecting an application filed by the petitioner under Order 39 Rule 5/15 read with section 151 of the Code of Civil Procedure, this writ petition has been filed by the petitioner.

Petitioner filed an application under Order 32 Rule 5/15 CPC inter alia contending that due to petitioners incapacity, her power of attorney holder and son Shailendra be appointed as her next friend and guardian and as this application has been rejected by the court below, the writ petition is filed.

The suit in question has been filed and is pending in the court concerned.

Petitioner is plaintiff and it is stated that initially an application was filed for the same benefit, but it was rejected by an order passed on 20.1.2011.

At that point of time, the application was rejected because proper medical certificate was not produced.

Now, vide Annexure P/15, a medical disablement certificate has been produced which shows that the petitioner is suffering from dementia and, therefore, contending that dementia is an infirmity, which prevents the petitioner from understanding the implication of the proceedings being held, the application is filed, which has been rejected.

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Chitra versus Anil Kumar and others Shri K.B.Bhatnagar, learned counsel for the petitioner, took me through the medical certificate - Annexure P/15, the statement of the petitioner in the cross-examination conducted on 12.8.2011 vide Annexure P/14 and tried to emphasize that as the petitioner is suffering from dementia, it was a fit case where the application should have been allowed and petitioners son, her power of attorney holder, appointed as her next friend and guardian.

It is stated that merely because the earlier application was dismissed on 20.1.2011, the order again passed rejecting the application was not proper, particularly when the medical certificate was not produced by the petitioner, showing her ailment.

Accordingly, contending that in a different proceeding also similar application has been rejected and certain interim order has been passed in a writ petition filed by

petitioner being W.P.No.6305/2011, prayer made is that the impugned action be quashed.

Shri Ashok Lalwani, learned counsel for the respondents, refuted the aforesaid, took me through the provisions of Order 32 and argued that an application under Order 32 can be entertained and allowed only after the person concerned is found to be of unsound mind.

Learned counsel submitted that if the facts and circumstances of the present case are scrutinized, it would be seen that the petitioner is not of unsound mind and not this application is filed only to somehow prevent the non- applicants from cross-examining the petitioner after she has filed her evidence on affidavit under Order 18 Rule 4 CPC.

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Chitra versus Anil Kumar and others Learned counsel invites my attention to the petition filed by Smt.

Chitra - the plaintiff herself, the affidavit in the writ petition sworn by the plaintiff and in paragraphs 1 and 2 she has made an averment that she is fully conversant with the case, the entire writ petition has been explained to her in Hindi, she has understood the same and she has all the way come from Mandla to Jabalpur and the affidavit was sworn at Jabalpur. That apart, it is pointed out that in the suit filed, the verification is by plaintiff Smt.

Chitra, she filed an application for amendment under Order 6 Rule 17 CPC vide Annexure P/3, the affidavit in support thereof is filed by Smt.

Chitra, wherein also she says that she has understood each and every averment.

It is further pointed out that plaintiff Smt.

Chitra has submitted her evidence by way of an affidavit under Order 18 Rule 1 CPC, the affidavit is submitted on 31.10.2007 and in the affidavit also she has

made averment by contending that she has understood the same and has sworn the affidavit.

Thereafter, Shri Lalwani invites my attention to Annexure P/4 - the power of attorney executed by the petitioner Smt.

Chitra, in favour of her son Shailendra Mishra, this power of attorney is executed on 15.9.2009 and in this power of attorney she claims to be of sound mind and all of a sudden it is stated that not she has become unsound.

Learned counsel further invites my attention to the averments made in the application under Order 32 - Annexure P/5 and points out that the petitioner only says that she underwent brain tumour surgery at Nagpur, 5-6 years back i.e on 22.6.2004, and No.4 Writ Petition No :

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Chitra versus Anil Kumar and others her health has deteriorated and, therefore, she claims to be unable to proceed in the matter.

Shri Lalwani submits that the totality of the facts and circumstances, if evaluated, would show that the petitioner at best may be ill physically, but there is nothing to indicate that she is of unsound mind and, therefore, as the requirement of Order 32 is not complied with and in rejecting the application the trial court has not committed any error.

Having given my due and anxious consideration to the averments made by the parties, I see much force in the objections and submissions made by Shri Ashok Lalwani.

The manner in which the petitioner, who is plaintiff, is proceeding in the matter goes to show that she has filed this writ petition on 31.7.2012 and before filing of the writ petition she came to Jabalpur on 28.7.2012 and has sworn the affidavit.

In her affidavit, she clearly states that she is the petitioner and fully conversant with the facts and circumstances of the case.

She also says that the accompanying writ petition has been drafted under her instructions, the same has been explained to her in Hindi and she understands the same and verifies her signature.

If the petitioner could understand the implication of all these things on 28.7.2012 and if she could execute a power of attorney in favour of her son, as is evident from the material available on record, I see no reason to hold that she is of unsound mind and needs a next friend or guardian to assist her in the proceedings.

The totality of the circumstances, the attitude of the petitioner and the manner in which the 5 Writ Petition No :

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Chitra versus Anil Kumar and others proceedings are being conducted, clearly goes to show that after filing of her affidavit/evidence under Order 18 Rule 4 CPC at the stage of cross-examination, the petitioner has come out with a false case of her being of unsound mind.

The material available on record and the conduct of the petitioner as is evident from the facts narrated hereinabove clearly goes to show that there is nothing that the petitioner is of unsound mind and, therefore, in rejecting the application I am of the considered view that the courts below have not committed any error warranting interference.

Accordingly, finding no ground to interfere into the matter, the writ petition is dismissed.

(RAJENDRA MENON) JUDGE Aks/-

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