

RAJ KUMAR  
v.  
RAMESHCHAND AND ORS.

OCTOBER 1, 1999

[B.N. KIRPAL AND S. RAJENDRA BABU, JJ.]

*Code of Civil Procedure, 1908 :*

*Order 32 Rules 1 and 15—Appointment of guardian—Eviction petition before Rent Controller—Owner of premises, a person of unsound mind—application under Or.32, Rule 1 read with Rule 15—Rent Controller appointing father as appellant's guardian and next friend—Order affirmed by High Court—Later, when after dismissal of eviction petition matter again came before High Court, it held that eviction petition was not maintainable without a guardian/next friend being appointed in accordance with provisions of Ss.52 to 55 of Mental Health Act—Held, in the instant case provisions provided under Order 32, Rules 1 and 15, CPC were applicable and not that under Ss.52 to 55 of Mental Health Act—High Court would decide the revision on merits—Rent and Eviction—Eviction Petition—Mental Health Act, 1987,—Ss.50, 52 53, 54 and 55.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5674 of 1999.

From the Judgment and Order dated 3.7.98 of the Madhya Pradesh High Court in C.R. No. 814 of 1997.

Dr. A.M. Singhvi, M.S. Dhillon and M.P. Shorawala for the Appellant.

Raju Ramachandran, Guanendra Agarwal and Bharat Sangal for Respondents.

The following Order of the Court was delivered :

Leave granted.

Raj Kumar, appellant no. 1 is a mentally retarded person. An application through next friend was filed on his behalf for eviction of the

A respondents from the premises which was owned by Raj Kumar. In reply to the Eviction Petition, it was *inter alia* stated that the appellant was a man of unsound mind and was not capable of doing any business and as no guardian has been appointed by the District Judge, the father could not act as a guardian.

B An Application under Order 32, Rule 1 read with Rule 15, C.P.C. was filed and the rent controlling authority by its order dated 4.8.93 appointed the father as the appellant's guardian and next friend. This order was challenged by the respondents by filing a civil revision before the High Court and the High Court by its judgment dated 20.10.93 affirmed the order of appointment of the father of appellant as his guardian and next friend.

C The rent control authority, after trial of the case, dismissed the application for eviction. Being aggrieved, a revision was filed by the appellant before the High Court. The High Court by the impugned judgment dated 3.7.98 dismissed the revision not on merits but on the ground that the provisions of the Mental Health Act, 1987 applied and the petition which was filed was not maintainable before the rent controlling authority without a guardian/next friend being appointed in accordance with the provisions of Sections 52, 53, 54 and 55 of the aforesaid Act. In fact, the High Court did not consider the merits of the case. Hence this appeal by special leave.

E Sections 52 to 55 are contained in Chapter VI of the Mental Health Act, 1987. This Chapter contains provisions relating to "Judicial inquisition regarding alleged mentally ill person possessing property, custody of his person and management of his property." Section 50 provides for an application being made for holding an inquisition with regard to the mental condition of a person which is alleged to be mentally ill and is possessed of property. Such an application can be filed only by the persons or authorities specified in Clauses (a) to (d) of Sub-Section (1) of Section 50.

F It is pursuant to the proceedings so initiated that the other provisions of the Chapter including Sections 52 to 55 would apply. Section 50 does not contemplate any application being made or a contention being raised by a tenant in a proceeding for eviction against him.

G In the instant case what was applicable was Order 32, Rule 1 read with Rule 15. An application for appointment of a guardian in accordance

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with the said provisions was filed. An application to this effect was filed before the Rent Controller and the father was appointed as the guardian and next friend of the appellant. Nothing more was required to be done and the High Court, in our opinion, was in error in coming to the conclusion that the Eviction Petition was not maintainable and the procedure provided by Sections 52 to 55 of the Mental Health Act, 1987 had not been complied with. A B

For the aforesaid reasons, this appeal is allowed the impugned judgment of the High Court is set aside. The High Court is directed to decide the Civil Revision No. 814 of 1997 on merits. The High Court should dispose of the said revision as expeditiously as possible, preferably within a period of six months. C

R.P.

Appeal allowed.