

Learned counsel for petitioner and respondents are present.

ORDERS ON IA-II

The application under consideration i.e., IA II is filed by the petitioner under Order XXXII Rule 15 of CPC seeking that the proposed next friend be appointed as the next friend of mentally challenged Sri. Veluswamy V. for the purpose of contesting the present case on behalf of the mentally challenged Sri. Veluswamy V. in the interest of justice and equity.

2. In the affidavit of the applicant accompanying IA No.II, which is filed in support of the application, the applicant has contended that Sri. Veluswamy V. is mentally challenged after the accident. On these grounds, it is sought that the proposed next friend who is none other than the wife of Sri. Veluswamy V. be appointed as the next friend of mentally challenged Sri. Veluswamy V. for the purpose of contesting the present case.

3. None of the respondents objected to the said application. However in compliance of provisions of Order XXXII Rule 15 of C.P.C, this court held an inquiry by examining the Sri. Veluswamy V. in the open court.

4. Heard learned Counsel for the petitioner

5. On careful perusal of present applications and the affidavit in support of it, the following points arise for my consideration:

1. Whether the Sri. Veluswamy V. is incapacitated from protecting his interests in the petition owing to his mental health issues and hence needs to be represented by a next friend ?

2. Whether the proposed next friend can be appointed as the next friend of the mentally challenged Sri. Veluswamy V. for the purpose of representing Sri. Veluswamy V. in this case?

3. What order:

6. After carefully analyzing the application and the answers given by the Sri. Veluswamy V. to the questions posed by this court while holding the inquiry with respect to IA -II, this court proceeds to answer the afore raised points for consideration as under:

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: As per the final orders,

for the following reasons.

7. **POINT No.1 and 2:**

At the very outset it is incumbent upon this court to clarify that the application is filed under Order XXXII Rule

15 of CPC which provides for appointment of next friend in case of a person who is incapacitated due to mental infirmity from protecting his interests in the petition. Further as regards the question whether the provision applies to a mentally challenged person, the Hon'ble High Court of Kerala in *Raveendran Vs. Shobana* decided on **03.12.2007** by relying upon various decisions rendered by various Hon'ble High Court of other states across India, has made it clear that mental infirmity includes deafness and muteness other forms of mental infirmity.

8. Now coming to the next question whether the Sri. Veluswamy V. is capable of protecting his interests in this petition in view of mental illness, this court held an inquiry to ascertain if the Sri. Veluswamy V., due to his mental illness is incapacitated from protecting his interests in the petition. The outcome of the said inquiry as can be seen from the answers given by petitioner and his wife that petitioner is totally reliant on the next friend and in fact the proposed next friend of the petitioner even informed the court that the petitioner responds occasionally and slowly and the applicant attends to the needs of the petitioner all by herself. Further even before the court the petitioner was slow to respond and appeared incapable of protecting his interests. This by itself would suffice for this court to hold that the Sri. Veluswamy V. is incapacitated from protecting his interests in the petition due to his mental illness.

9. The view taken by this court is supported by the decision of the Hon'ble High Court of Kerala in *Mary Vs. Leelamma and others* rendered on 30.06.2020, wherein it is held thus:

16. *The term 'mental infirmity' has not been defined in the C.P.C, 1908. In the context in which the term is used in Order 32 Rule 15 C.P.C., it is capable of taking a meaning different from that of unsoundness of mind. What would that meaning be?*

17. *Cognitive skills are used to comprehend, process, remember, and apply incoming information to create an external reaction. The cognitive skills are the core skills a person's brain uses to think, read, learn, remember, reason, and even pay attention. The cognitive functions enable us to orient ourselves in the world, making us aware of the various dangers and rewards, assimilate the main sources of pleasure and pain, and are also the means by which we receive information from others. An infirmity in the cognitive faculty which impairs the skills of perception, discernment, comprehension and thought, will necessarily have an impact on the mind. A hearing impaired person becomes dumb on account of the impairment of his skills of perception, discernment, comprehension thought and response. Living as a deaf and dumb person, has a debilitating effect on the mental faculties of comprehension,*

thought, communication and even response. These faculties when affected will have an effect on the person's capacity to protect his civil rights. In the matter of communicating his views about his civil rights, a deaf and dumb person will be weak. If the impairment of hearing is to such an extent that it is almost difficult to communicate with that person, or even comprehend any reply given by him, except by understanding the signs by which one communicates with him, then there arises a weakness of the mind. This weakness, akin to an infirmity, makes it almost impossible for any person, other than those intimately acquainted with that person or a trained interpreter, either to reach his mind or to interpret it. When the infirmity of hearing is to such an extent that no one, other than those closely associated with that person or an interpreter alone is able to communicate and reach that person's mind, then, that infirmity could be regarded as a mental infirmity for the purpose of Order 32 Rule 15 of the C.P.C. Such a person though not mentally unsound, is, for the purpose of Order 32 Rule 15 of the Code of Civil Procedure, 1908, a person who is mentally infirm.

18. We are fortified in the above conclusion by three decisions of different High Courts, including one of Kerala High Court. In *Nanak Chand and Ors. v. Banarsi Das and Ors.* (126 Ind.Cas. 579 = AIR 1930 Lah. 425), while dealing with the case of a deaf and dumb person under

Order 32 Rule 15, it was held that "it is only by means of signs that one can communicate with him and his replies can be given only by means of signs, and it further appears that only a few persons who know him intimately are capable of making him understand by signs what they desire to convey to him or to follow his replies given in a similar manner. Under the circumstances, I should say that it is almost impossible for any person not intimately acquainted with him either to reach his mind or to interpret it. No definition of the expression 'mental infirmity is to be found in any of the books on the subject dealing with mentally defective persons, nor did the counsel on either side refer to any authorities on the subject; the case, therefore, is one of first impression, and after giving the matter my careful consideration I am of the opinion that Rule 15, Order 32, is intended to cover the case of persons like Dina Nath who are absolutely deaf and dumb and on that account are incapable of receiving any communications or of communicating their wishes or thoughts to others."

Even here the inquiry discloses that the Sri. Veluswamy V. cannot contest the petition on his own and assistance of proposed next friend who is intimately acquainted with Sri. Veluswamy V.

10. Further the provisions of Order XXXII makes it clear that any person who is of sound mind and has attained majority and whose interest is not adverse to that of the

mentally challenged can be appointed as the next friend of the mentally challenged party to the petition. In the present petition the relief sought by the petitioner is compensation and the interest of the wife cannot be considered as adverse to that of the mentally challenged Sri. Veluswamy V.. Further the proposed next friend of the petitioner is major in age and upon inquiry before the court found to be of sound mind and most importantly she appears to be capable of communicating with the Sri. Veluswamy V.. Further the petitioner has submitted no objections to appoint her as next friend of Sri. Veluswamy V. which goes to show that the Sri. Veluswamy V. has got no objections to appoint proposed next friend as his next friend to represent his interest in this case and the petitioner is ready to represent the Sri. Veluswamy V.'s in this case.

11. For the foregoing reasons and in view of the inquiry held by this court, this court finds no hesitation in holding that the Sri. Veluswamy V. is incapacitated due to his mental incapacity from protecting his interests in the petition as such he needs to be represented by a next friend. Hence *Point No.1 and 2 are held in the affirmative.*

12. **POINT No.3:**

In view of the finding of this court on Point No.1 and 2 this court passes the following order:

ORDER

“IA-II filed under Order XXXII Rule 3 of CPC by petitioner is hereby allowed.

Consequently the petitioner is appointed as the next friend of the mentally challenged Sri. Veluswamy V. for the purpose of this case only.”

Call on 03.02.2026.

Prl. Judge,
Court of SC., & MACT., Mysuru.