

**MISC. CASE :- 59 OF 2023**  
**(CNR No. WBPS01-000220-2023)**  
**(JO CODE No. WB01165)**

**Before Smt. P. Shukla, Ld. Judge, 2nd Bench.**

Order no. - 41  
Dt. 23.04.2025

Today is fixed for order.

Both parties filed hazira.

Heard the Ld. Advocate for O.P. who submitted that in the instant Misc. Case petitioner no. 2 is representing petitioner no. 1 without any leave and next friend / or guardian to be appointed by Ld. Court and without getting any proper order regarding mental status of person. So, the instant petition be taken off the file with cost.

Petitioner raised strong objection.

Heard. Considered.

On perusal of Para 2 especially of instant Misc. Case, it appears that it supports the statement of O.P.

Order 32 Rule 2 reads as "Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

In the instant Misc. Case it is stated by petitioner that petitioner no. 1 is unsound mind and petitioner no. 2 is representing him but without any leave of the court.

At this point, I am relying on the judgment.

**Amrutaben Budhaji Thakore Vs. Nitaben Somabhai Patel, AIR 2003 Guj 292, 2003 (2) Guj LR 1051** wherein it was held that "When a finding is reached by the Court that the plaintiff is a person of unsound mind, the suit is not to be dismissed but the plaint is to be taken off the file enabling the person of unsound mind to cure the irregularity. As soon as the defect is cured and the person of unsound mind is properly represented through next friend or guardian, the suit will continue; but in no case the plaintiff is to be non-suited."

Therefore, the court is of the view that petitioner should be taken off the file.

Hence, it is

**ORDERED**

that the petition under Order 32 Rule 2 read with Order 32 Rule 15 of the CPC is allowed on contest without any order as to cost.

D/C by me.

Sd/-

Judge, Bench - II,  
P.S.C. Court, Calcutta.

Sd/-

Judge, Bench - II,  
P.S.C. Court, Calcutta.