

In the Court of Ld. District Judge, South 24-Parganas

Misc. Case No.473 of 2024

Present : Smt Monikuntala Roy (WB01088), District Judge (I/c)
South 24-Parganas, Alipore

Sanjay Goswami Petitioner/Applicant
Sujoy Goswami Mentally ill person

Order No. 10, dated 06.03.2026

Today is the date fixed for hearing argument.

Hazira is filed on behalf of the applicant through his Learned Advocate.

Heard argument in full and closed.

At this stage, the record is taken up for passing order.

The applicant Sanjoy Goswami is the elder brother of the mentally ill person namely, Sujoy Goswami.

The instant case has been filed under section 14 of the Rights of Persons with Disabilities Act, 2016 with a prayer of the applicant/petitioner namely, Sanjoy Goswami praying for appointing him as the guardian of the person and property of his brother Sujoy Goswami.

The parents of the petitioner i.e. Santanu Kumar Goswami and Uma Goswami died on 23.09.2010 and 04.11.2018 respectively leaving behind the petitioner and his younger brother as their legal heirs and successors.

It is further contended by the applicant that his younger brother namely, Sujoy Goswami, aged about 50 years is a disabled person having severe intellectual disability to the extent of 90 per cent as has been certified by the Secretary & Member, Zonal Medical Mental Board, Nil Ratan Sircar Medical College & Hospital as well as counter-signed by the Chairman and two other members of the said Zonal Medical Mental Board, Nil Ratan Sircar Medical College & Hospital.

It is contended that since birth, said Sujoy Goswami had been diagnosed with signs of insanity and who is at present completely of unsound mind and has become incapable of managing himself and his property fully. After the demise of their parents, said Sujoy Goswami has no other relation other than the present applicant/petitioner being his elder brother.

As a result of his intellectual impairment, said Sujoy Goswami is unable to take effective participation in society equally with others and is also unable to earn bread and butter for himself and for his family members.

It is the further contention of the applicant/petitioner that he along with his younger brother have jointly seized and possessed the property mentioned in Schedule-A in the application being a four-storied building lying and situated on land admeasuring 2 cottahs 14 chittaks and 28 sq.ft. At premises No.59/1B, Hindustan Park, Sarat Bose Road, Kolkata-700029, P.S. Ballygunge in the District of South 24-Parganas.

It is also contended that an income of Rs.40,000/- has been generated from the tenancy of Sookerating Tea Company (P) Ltd in the ground floor of the said four storied building as mentioned in Schedule-A of the application.

It is contended that he is the only person who looks after the well-being of his younger brother Sujoy Goswami, and as such for the well-being of said Sujoy Goswami, it is necessary that he be appointed as guardian of the person and property of his younger brother and to which no one has any objection. Hence, this application.

The petitioner/Sanjay Goswami has filed an affidavit-in-chief on 13.01.2026 and he was examined and discharged as P.W.1. He has also filed and proved some documents marked as exhibit nos. 1 to 4 respectively viz, the self-attested photocopy of the Aadhaar Card of the witness, the original death certificate of Santanu Kumar Goswami, the original death certificate of Uma Goswami and the original disability certificate of Sujoy Goswami.

On careful perusal of the exhibited documents, it can be seen that the petitioner Sanjoy Goswami is the elder brother of said mentally retarded person Sujoy Goswami and from the 'Disability Certificate' (exhibit-4) issued from Nil Ratan Sircar Medical College Hospital, it appears that the said Sujoy Goswami has been detected with 90% intellectual disability.

The subject matter of this case was published in Bengali daily newspaper 'Bartaman' on 01.09.2025. However, none appeared to contest or put any objection in the case.

The present petitioner Sanjay Goswami, being the elder brother, has sought permission from this court for appointing him as the guardian of the person and property of his said mentally ill or disabled brother Sujoy Goswami.

While considering the case, keeping in mind the legislative mandate of the Guardianship related Act, the Court must consider that the best interest of the intellectually disabled person is to be looked into.

In the instant case, as it has been established by the evidence adduced by the party, both ocular and documentary that the said intellectually disabled person is under the care and custody of his elder brother Sanjay Goswami and in absence of the parents of the intellectually disabled person, the present applicant/petitioner is acting as the natural guardian of the said mentally ill person. Hence, the petitioner has every right to look into the best interest of his mentally disabled younger brother and for that reason he requires sanction or the permission of the Court for appointing him as the guardian of the person and property his mentally retarded brother.

In the above factual scenario, this Court should not stand in the way as it finds no such impediment or bar for refusing the prayer of the petitioner. At this stage, in order to give relief to the litigant and considering the reason for which the petitioner/applicant has come before this Court, under Right of the Persons with Disabilities Act, 2016, the provision be looked into being relevant here.

Also perused Section 14 of The Rights of Persons with Disabilities Act, 2016, which provides that:

1) 14. Provision for guardianship.—(1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority,

as the case may be, to determine the nature and manner of support to be provided.

Explanation.—For the purposes of this sub-section, “limited guardianship” means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

(3) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose.

On careful perusal of such unchallenged testimony adduced by the petitioner/applicant and the supporting documents as discussed above, this Court is of its view that the prayer of the applicant/petitioner is justified and the same may be allowed by appointing him as the guardian of the person and property of his intellectually disabled brother Sujoy Goswami.

The law as provided under the Act of 2016 specifies that when a person with disability is unable to take legally binding decisions, may be provided with further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person and that the District Judge or the designated authority, as the case may be, may grant total support to the person with disability requiring such support which may be reviewed.

It is, therefore,

Ordered

that the instant Misc. Case No.473 of 2024 under section 14 of The Rights of Persons of Disability Act, 2016 be and the same is allowed.

The present petitioner namely, Sanjay Goswami being the elder brother and natural guardian of his mentally impaired younger brother Sujoy Goswami by virtue of this order, is hereby authorized to take all legally binding decisions for adequate and appropriate support to his mentally impaired younger brother Sujoy Goswami for better management of the person and the property standing or to be accrued in his name for a limited purpose and in order to apply for, withdraw and utilize the monthly rent amount from the rental property morefully described in the schedule.

The applicant/petitioner is directed to furnish a bond of Rs.10,000/- (Rupees Ten Thousand) only with an undertaking that he will take care of his said mentally retarded younger brother Sujoy Goswami.

Let a copy of this order be supplied to the applicant at free of cost. Thus the instant Misc. Case case stands disposed of accordingly.

Note it in the register accordingly.

Dictated and corrected by me.

Sd/- Monikuntala Roy
District Judge (I/c)

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