

THE HON'BLE SRI JUSTICE K.C. BHANU

CIVIL REVISION PETITION No.65 OF 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the Order, dated 25.11.2014, in Interlocutory Application No.487 of 2014 in Original Suit No.58 of 2013 passed by the Additional Senior Civil Judge, Tenali.

2. Respondent No.1 herein being mother of defendant No.4 in the suit, who was a minor, filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short, 'CPC') and Order VI Rule 17 and Section 151 CPC to implead her as a next friend and natural guardian of defendant No.4 stating that father of the minor and husband of the present petitioner, representing the minor as a guardian, filed Vakalat as well as written statement without submitting real facts on behalf of defendant No.4-minor; that, she is bound to protect the interest and welfare of defendant No.4-minor, therefore, her presence is necessary in the suit to protect the rights of the minor and to file additional written statement on behalf of defendant No.4.

3. Revision petitioner herein/respondent No.1 therein filed counter in the interlocutory application stating that the 1st defendant in the suit, who is father of defendant No.4-minor, is representing defendant No.4; that without discharging the father, the present application is not maintainable and therefore, he prayed to dismiss the petition.

4. Learned Judge after considering the material available on record came to the conclusion that the mother may look after the property, welfare and interest of the minor and therefore, the petitioner therein can be permitted to represent defendant No.4 as a mother and next friend in the suit and allowed the same. Challenging the same the present revision is filed.

5. Learned counsel for the revision petitioner contended that the father, who is acting as a guardian of defendant No.4, has taken all precautions to safeguard the interest of the minor and there is no need to appoint a fresh guardian; that there is no allegation that the present guardian is acting against the interests of the minor; that the application was filed after lapse of one year nine months and therefore, he prays to set aside the impugned order.

6. There cannot be any dispute that under Order XXXII Rule 3(1) CPC, where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian in the suit for such minor. Order XXXII CPC has been enacted to protect the interests of minors, persons of unsound mind or persons, who are not capable of suing or defending themselves.

7. Admittedly, the Court has not appointed the father of the minor as a guardian. It is the duty of the Court to satisfy itself that the proposed guardian is fit and proper person to represent the interests of the minor. The interest of the minor is the paramount consideration for appointment of a guardian irrespective of the relationship of the parties to the minor.

8. A specific allegation has been made in the affidavit filed in support of the petition stating that the 1st defendant filed a written statement without submitting the real facts and in order to protect the properties and welfare of the child, the petitioner therein may be permitted to represent the minor. This Court is of the opinion that the interest and welfare of the child will be protected, if the mother is allowed to come on record. Precisely for that reason the trial court allowed the petition and that order needs no interference by this Court.

9. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C. BHANU

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Date:13.02.2014
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