

Raj Kumar

Vs

Rameshchand and Others

Civil Appeal No. 5674 of 1999

(B. N. Kirpal, S. Rajendra Babu JJ)

01.10.1999

ORDER

1. Leave granted.

2. Raj Kumar, Appellant 1 is a mentally retarded person. An application through next friend was filed on his behalf for eviction of the 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 business and as no guardian had been appointed by the District Judge, the father could not act as a guardian.

3. An application under Order 32 Rule 1 read with Rule 15 CPC was filed and the Rent Control Authority by its order dated 4.08.1993 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 20.10.1993 affirmed the order of appointment of the father of the appellant as his guardian and next friend.

4. 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 judgement dated 03.07.1998 dismissed the revision not on merits but on the ground that the provisions of the Mental Health Act, 1987 applied to the petition which was filed and was not maintainable before the Rent Control 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.

5. 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 who is alleged to be mentally ill and is possessed of property. Such an application can be filed only by persons or authorities specified in clauses (a) to (d) of sub-section (1) of Section 50. 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 proceedings for eviction against him.

6. 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 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.

7. 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 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.