

(2013) 10 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 1190 of 2013 (O&M)

Avinash Chander Mookhy

APPELLANT

Vs

General Public

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0077

Hon'ble Judges : Rakesh Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Garg, J.—One Sukh Darshan Jain (respondent No. 2) filed a petition for appointment of guardian u/s 53(1) of the Mental Health Act, 1987 in respect of mentally ill person Ms. Saroj Kumari daughter of late Sri. Dharam Chand Mukhi. According to the case set up by him, Ms. Saroj Kumari is a mentally ill person and was under the care of Ms. Swaran Kanta Mukhi, who died on 4.8.2007. Except Swaran Kanta Mukhi, there was no kith and kin of Ms. Saroj Kumari, who could take care of her and her properties as the remaining legal heirs are settled abroad. It was the further case of respondent No. 2 that he being a family friend of the respondents, was in a position to effectively take care of Saroj Kumari Mukhi and her property. In the petition, respondent No. 2 arrayed appellant as well as respondents No. 3 and 4 also, who are brothers and sisters of Saroj Kumari Mukhi. They filed written statement submitting that the petition be accepted and respondent No. 2 be appointed as legal guardian of mentally ill person Saroj Kumari Mukhi. However, during the pendency of the petition, an application was made on behalf of the respondent No. 2 to transpose him as applicant-petitioner No. 2. The said application was allowed on 5.1.2012.

2. The trial Court vide order dated 26.11.2012 rejected the petition by observing as under:

"After having heard the counsel for the petitioners, I am of the view that none of

the petitioners can be appointed as guardian for the mentally ill person Ms. Saroj Kumari Mukhi. As per Section 50 of the Mental Health Act, 1987, the application for judicial inquisition can be made by any of the relatives of the mentally ill person or by a Public Curator appointed under Indian Succession Act, 1925 or by the Advocate General of the State in which the alleged mentally ill person resides. The petitioner No. 1, Sukh Darshan Jain does not fall within the category of any such persons, therefore, neither he is competent to file the application for judicial inquisition nor he can be appointed as the guardian of the mentally ill person. So far as, the petitioner No. 2, Avinash Chander Mukhi is concerned, certainly, he is the real brother of the mentally ill person and competent to file application for judicial inquisition. But admittedly, he is residing in Sydney, Australia and even his local address has not been mentioned in the petition. He has also not come forward to step into the witness box to depose that he is ready to take care of the person and the property of the mentally ill person Ms. Saroj Kumari Mukhi. Unless this kind of assurance is given by the petitioner No. 2, how can he be appointed as the guardian for the person and the property of the mentally ill person. Moreover, when he is not residing in India, how can he take care of person and property of mentally ill person. Thus, I find none of the petitioners to be the fit persons to be appointed as guardian of the mentally ill person Ms. Saroj Kumari Mukhi."

3. Aggrieved from the aforesaid order, the appellant has filed the instant appeal submitting that he as well as other respondents No. 3 and 4 want respondent No. 2 to be appointed as a legal guardian of Saroj Kumari Mukhi, who is their sister, and since all the relatives of the mentally ill person are settled abroad, therefore, respondent No. 2 should be appointed as guardian and in view thereof, the impugned order be set aside and respondent No. 2 be appointed as legal guardian of Saroj Kumari Mukhi.

4. A careful reading of the application for appointment of respondent No. 2 as legal guardian of mentally ill person would show that the appellant as well as respondents No. 3 and 4 are not ready to take responsibility of their mentally ill sister as they have shown no interest to stay in India and to serve their mentally ill sister and instead have made this petition and further filed this appeal to appoint respondent No. 2 as guardian.

5. At the asking of the Court, learned counsel for the appellant had sought time to file an affidavit on behalf of the appellant to submit that the appellant is ready to take care of Ms. Saroj Kumari Mukhi, his elder mentally ill sister. However, no affidavit was filed. On 4.7.2013, this Court directed the appellant to be present in Court just to assess his bona fides. On 16.8.2013, counsel for the appellant sought a short adjournment to enable him to get instructions from the appellant and thereafter, filed an affidavit dated 19.8.2013 undertaking to take legal guardianship of his elder mentally ill sister and to abide by all the legal and moral obligations towards her. The case was adjourned to 1.10.2013 and the appellant was asked to be present in Court to show his bona fides.

6. Today, another affidavit dated 23.9.2013 has been filed wherein it has been stated that the appellant was willing to take legal guardianship of Saroj Kumari Mukhi but he could not travel to India and shall be present after 18.12.2013 before this Court.

7. From the conduct of the appellant, it is crystal clear that he is only interested to take the legal guardianship of the mentally ill sister, namely, Saroj Kumari Mukhi. However, he has failed to show any of his intentions to discharge his moral obligations by serving his elder mentally ill sister as despite asking of the Court, he could not even spare time to come to India.

8. In view thereof, this Court finds no merit in this appeal as in the presence of the real brothers and sisters, a stranger i.e. Respondent No. 2 (who is a friend of the appellant), is coming forward to claim legal guardianship of mentally ill person. Even otherwise, as per the provisions of the Act, a stranger cannot be appointed as guardian of mentally ill person.

In view thereof, I find no merit in this appeal.

Dismissed.