
(2004) 07 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1534 of 2004

Chand Bihari Sharma

APPELLANT

Vs

The District Judge and Others

RESPONDENT

Date of Decision : 19-07-2004

Acts Referred:

Guardians and Wards Act, 1890 — Section 14, 9

Citation : (2005) 104 FLR 402 : (2005) 1 RLW 183 : (2004) 4 WLC 538

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : J.P. Sharma, Mohd. Rafiq, AAG, for the Appellant;

Final Decision : Allowed

Judgement

K.S. Rathore, J.—The petitioner is son of late Shri Radhey Shyam Sharma, who was a permanent employee of the erstwhile Rajasthan Electricity Board and on attaining the superannuary age retired from RSEB and the pension was granted in favour of the petitioner. On 13.5.2002 the petitioner expired, therefore, the petitioner applied for family pension.

2. The petitioner's younger brother Shri Ram Bihari Sharma is a mentally retarded person since his birth. The brother of the petitioner is not in a mental status to look after himself and is looked after by the petitioner. As the petitioner is lawfully entitled for family pension, therefore, he applied for family pension before the competent authority.

3. It is informed vide Annex.2 by the respondents to submit the guardianship certificate. On receipt of the said letter the petitioner moved an application under Guardianship and Wards Act for appointment as a Guardian of Ram Bihari in the Court of District Judge, Jaipur City, Jaipur and the same was registered as GWA 282/2003 and the notices were issued. The statement of the petitioner was also recorded and it was fixed for final hearing on 6.1.2004.

4. Vide order dated 6.1.2004 the District Judge, Jaipur City refused to issue

certificate u/s 7 of the Family Courts Act on the ground of jurisdiction for issuance of the certificate has been transferred to the Family Court from the District Court with the observation the office was directed to return the application.

5. The original application was returned to the petitioner and the same was presented before the Family Court. The Family Court also refused to entertain the same as having no jurisdiction. Learned counsel for the petitioner also referred Section 9 of the Guardians & Wards Act, 1890. As per Section 9 if the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides meaning thereby for issuance of the certificate under the Guardians & Wards Act, 1890 the District Courts are having jurisdiction.

6. Learned Addl. Advocate General Mr. Rafiq submits that the respondents are nothing to do with this. As the petitioner's application is not entertained by the District Judge, Jaipur City for appointment as guardian of the mental retarded brother for the purposes of family pension and the application was returned to the petitioner and the matter is transferred to the family court. The family court also returned the same on the ground that it has no jurisdiction to issue such certificate. In such circumstances it is submitted by learned AAG that the petitioner should not be left remedy less and this Court may direct to adjudicate his application and decide the same in accordance with the law.

7. Learned Addl. Advocate General also drawn attention of this Court towards Section 14, which deals with the simultaneous proceedings in different Courts. As per Section 14 of the Guardians & Wards Act, 1890 if proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

8. If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

9. In view of Section 14 this Court is having power to direct the court to adjudicate the matter, which is simultaneously initiated before the District Court and the Family Court. Therefore, as per Sub-section 2 of Section 14 of the Guardians & Wards Act, 1890 I deem it proper to direct the District Judge, Jaipur City to adjudicate the application for issuing the certificate of the guardianship and the same be considered and decided in accordance with the provisions of law.

10. With these observations, the writ petition stands allowed and the order dated 6.1.2004 is herewith quashed and set aside.