

(1992) 05 AHC CK 0048

In the Allahabad High Court

Case No : Testamentary Suit No. 2 of 1988 connected with Testamentary Case No. 27 of 1987

Mahendra Pratap Singh (deceased) and another

APPELLANT

Vs

Smt. Padam Kumari Devi

RESPONDENT

Date of Decision : 22-05-1992

Acts Referred:

Advocates Act, 1961 — Section 35
Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 10 Rule 4, Order 16 Rule 13, Order 16 Rule 20, Order 16 Rule 7
Contract Act, 1872 — Section 183
Evidence Act, 1872 — Section 109, 165
Powers of Attorney Act, 1882 — Section 2

Citation : AIR 1993 All 143

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Advocate : A.K. Sharma, P.M. Gupta and K.S. Chauhan, for the Appellant; R.K. Jain and Prabha Kant Misra, for the Respondent

Final Decision : Dismissed

Judgement

1. A very ugly situation faces the Court, the High Court, in its original jurisdiction in these cases. Many questions have been flung at the Court. The Court must answer them as they are all questions which this Court or any other Court will have to face some time or the other in the conduct of original proceedings.

2. There are two matters before the Court. Both arise out of and relate to the estate of one Mahendra Pratap Singh. By testamentary case No. 13 of 1986 (subsequently converted into testamentary suit No. 2 of 1988) Wing Commander Narendra Pratap Singh, the brother of the deceased, applied to the High Court for letters of administration on September 18, 1986. Notices were issued on the petition and an order for citation was also made. A year and a quarter later a petition was filed by Padma Kumari seeking letters of administration on the same estate of the deceased. Wing Commander Narendra Pratap Singh has sought

letters of administration upon a will dated November 25, 1985. Padma Kumari Devi the mother of the deceased was seeking letters of administration on a will dated August 7, 1985 and November 25, 1985, respectively, Notices were issued on the petition of Padam Kumari Devi also.

3. Pleadings in both the cases had been exchanged. The case filed by Narendra Pratap Singh was dismissed for want of prosecution on October 31, 1991. This case had been converted into a suit. Testamentary case No. 27 of 1987 had not been converted into a suit, to avoid multiplicity of proceedings under Chapter XXX of Rules of the High Court. One case would suffice to consider the matters on the estate of the dead man. The suit of Narendra Pratap Singh having been dismissed for want of prosecution, the case filed by the mother Padam Kumari Devi became a non-contentious business. This was case No. 27 of 1987. It had not been converted into a suit.

4. Wing Commander Narendra Pratap Singh moved an application (A 28) for restoration of the suit on November 21, 1991. He gave reasons in this application supported by an affidavit why his suit needs to be restored to its original number. Lack of communication between his counsel and him kept him ignorant of the proceedings. In these circumstances he submits, that his counsel remained without instructions or did not appear but this left him facing an order for not prosecuting his suit, which was dismissed for this reasons. There are other relevant and essential facts mentioned in this affidavit accompanying this application. The application mentions that while he was a pilot in the Air Force until he retired in the year 1983 he was posted away from Dehradun. His mother, he submits is in the bondage of one Ajit Singh Panwar.

5. Ajit Singh Panwar, it is contended is Padam Kumari Devi's grand daughter's husband, in other words Narendra Pratap Singh's sister (Smt. Manhar Kumari's daughter's husband). The daughter's name is Parnita. A petition before the Delhi High Court seeking a succession certificate, was filed on behalf of his mother, by the aforesaid Ajit Singh Panwar, stating that her son Mahendra Pratap Singh, deceased left no Will. This petition before the Delhi High Court was subsequently withdrawn to be filed before the Administrative Sub-Judge at Delhi and numbered as case No. 361 of 1986 and this also was withdrawn and dismissed as such; reference paper No. A 13 in case No. 27 of 1987.

6. The Court notices that all the pleadings on behalf of Padam Kumari Devi had been affirmed at Dehradun at Delhi or at Allahabad. The conduct of the case was through a person who claims himself as the holder of general power of attorney of Padmakumari Devi. The contention before the Court on behalf of Narendra Pratap Singh since he has filed his application (A 28) for having his case restored is that there are no issues between him and his mother but for the fact that his mother lives by sufferance with his niece's husband. He, in effect, in his application-affidavit (A-35, A-38) contends that his mother is 87 years old and not of an independent mental disposition and is captive of the person who files pleadings on her behalf in matters of testamentary disposition and succession

and these matters cannot be conducted through a general power of attorney. The issue arose when the application seeking restoration of the dismissed suit was under consideration.

7. Learned counsel on behalf of Narendra Pratap Singh submitted that instructions of Mr. P. K. Misra to address the Court on behalf of Padma Kumari Devi is itself questionable as Padma Kumari Devi is not in a position to give instructions and the issue was being diverted on the consideration of the restoration application (A 28) and not on the main merits of the case. It was submitted on behalf of Wing Commander Narendra Pratap Singh that there are no issues between his mother and him, or for that matter between the mother and her children, and this would be clear if the person who claims to represent his mother by a power of attorney is kept away from the proceedings and then every aspect would be clear before the Court. It was submitted that his mother (Padma Kumari Devi) is neither capable of giving instructions nor has comprehension to receive them. It was submitted the records itself reveals that the attorney holder was calling the shots and not his mother. Thus, the court had already ordered that it would be best that parties themselves appear before the court and give a consensus on who shall receive letters of administration. This modality was agreed between the learned counsel for the parties when the court passed its order on December 11, 1991. Thus, the parties were required to be present on January 20, 1991.

8. The case was taken up on January 20, 1991. Learned counsel for respective parties indicated to the court on who was present and not present. On behalf of Narendra Pratap Singh, it was submitted that Narendra Pratap Singh and his sister Smt. Nirmala Rana were present along with their counsel Messrs P. M. Gupta and K. M. Chauhan, Advocates. Counsel, aforesaid, further submitted that their client's sister Manhar Devi was not present and had sent a telegram to them, to the effect that she will not be able to come. The telegram is on record. Manhar Devi thus, was not present. On the case of Padmakumari Devi Mr. P. K. Misra, Advocate, submitted that he is in Allahabad since yesterday, January 19, 1992, along with the person who holds her general power of attorney -- Ajit Singh Panwar and his wife Parnita, not present in court. Padmakumari Devi was not in court as it was stated that she was too tired and feeble to attend the court. A mention was followed by an application (A 31 and A-33) that Padmakumari Devi cannot appear "on account of her old age and exertion after a long journey". An adjournment until January 23, 1992 was requested. Mr. P. K. Misra, made a submission that the court should pass an injunction preventing Narendra Pratap Narain Singh and his sister Nirmala Rana from meeting their mother, staying at a local hotel. Learned counsel for Narendra Pratap Singh rightly reacted on this mention to submit that it was inappropriate of counsel (Mr. P. K. Misra, Advocate) to require a court order that the son and daughter may not see their aged mother. In fact he sought an adjournment of the case until 3 O'clock that afternoon so that the son and daughter could call on their mother and find out exactly what was wrong with her. The court did not pass an

injunction preventing Narendra Pratap Singh and his sister Nirmala Rana from calling on their mother and adjourned the case until 3 O'clock afternoon. Narendra Pratap Singh and Nirmala Rana reported to the court through their counsel during the afternoon of that day that they had met their mother. It was submitted on that day on the resumption of adjourned proceedings that the aspect of their mother and them being together is being thwarted by Ajit Singh Panwar husband of the grand daughter, who comes in between them and their mother who now is senile.

9. The court indicated that the matter would be taken the nest day i.e. January 21, 1992 Mr. P. K. Misra, Advocate, insisted that the case be adjourned to Thursday January 23, 1992. Learned counsel for Narendra Pratap Singh submitted that adjournment for January 23, 1992 would frustrate the intention of the order in bringing the family together as Smt. Nirmala Rana has to leave Allahabad for Nepal on January 21, and the court be pleased to take up the case on January 21, 1992. The case was fixed for January 21, 1992. The proceedings are on record on the order-sheet of that day,

10. On the date fixed i.e. January 21, 1992 Padmakumari Devi did not appear another application was filed by Ajit Singh Panwar stating in a supporting affidavit that it was not possible for Padmakumari Devi to appear. The reason stated was that she is extremely weak after her long journey when she came to Allahabad during the afternoon of January 19, 1992 from Dehradun. She was advised complete rest. A local doctor's certificate (A-33/10) only stated that "Padmakumari Devi aged 87 years is suffering from tiredness since morning. She is advised to have medicines and rest for two days only". The thumb impression of Padmakumari Devi was certified by the doctor. The application appending the doctor's certificate with the affidavit of the power of attorney holder seeking adjournment and undertaking to produce Padma-kumari Devi on January 23, 1992, is A-33.

11. Counsel for Padmakumari Devi Mr. P. K. Misra, even went to the extent of telling the court that Padmakumari Devi cannot appear before January 23, 1992 and that Smt. Nirmala Rana may come back from Nepal again on that day. Counsel aforesaid insisted that Padmakumari Devi cannot come to court but a commission may examine her. This court, thus, appointed a commission. The commission was given directions by the court in its order dated January 21, 1992 that it report to the court the next day. Learned Commissioner reported to the court on January 22, 1992 when the court convened at 10 a.m. The commission had been directed by the court that when Padmakumari Devi is being examined by the commission only Narendra Pratap Singh and his sister Nirmala Rana, the two of her progenies present in Allahabad would be present. No other person would be present including lawyers on both sides. Mr. P. K. Misra, Advocate, had objected on this order.

12. The commission gave its report to the court. The report of the commission is A-34.

13. The commission reported that Padmakumari Devi cannot comprehend. On questions being put to her by the commission, she gave incoherent answers. She was very happy to see her son Narendra Pratap Singh and her daughter Nirmala Rana and blessed them. She could not even reply when the commission's enquiries were being put to her through her daughter. The answers received had no nexus with the questions. The commission reported that Padmakumari Devi is not in a position to understand or give instructions or authority. On a question by the commission, Padmakumari Devi, gave an affirmative answer that she had given her thumb impression on a paper to Ajit Singh Panwar. She insisted on being emphatic in wanting to express herself that her thumb impression had been taken. The commission wanted to test whether Padmakumari could write. She was given a pen, which the commission reports, she first held in her left hand and then in her right, but ultimately was unable to write her name. The commission reports that she seemed harassed when she expressed in Hindi "Idar Jaon udhar jaon -- main bahut pareshan -- Radha Krishna, Radha Krishna -- Hare Ram Hare Ram". The commission further reports that Padmakumari has instinct but no understanding. In reply to most of the questions she was either pointing out something on the wall or was reciting bhajans in Hindi." As the affidavit moved by Ajit Singh Panwar undertook to produce Padmakumari Devi on January 23, the court fixed the case for January 23, 1992.

14. On January 23, 1992 Narendra Pratap Singh moved an application (A 35) in effect, seeking directions of the court to remove the person who escorts his mother so that he could put his mother in a military hospital at Allahabad. Counsel for Narendra Pratap Singh initially did not serve a copy of this application on Mr. P. K. Misra, Advocate, as now, they submitted that they had instructions to state on behalf of their client Wing Commander Narendra Pratap Singh, and son of Padmakumari Devi that the latter is not in a position mentally or legally, being under a mental and legal incapacity, to have a mind or will of her own and that Mr. P. K. Misra, Advocate was not her counsel and even if he was acting on the instructions of Mr. Ajit Singh Panwar, claiming under a general power of attorney, on behalf of the mother of their client, the authority of the so-called agent, in testamentary proceedings was of no value and all actions of Ajit Singh Panwar, aforesaid, acting as he claims under power of attorney are invalid, void and illegal, counsel submitted that Padmakumari Devi could not act on her own and it required an order of this court to assign a next-of friend for her and declare Ajit Singh Panwar as a person who holds an interest adverse to the mother of their client. The court directed learned counsel for Narendra Pratap Singh that no matter what the decision of the court may be it would be appropriate that a copy of the application A-35 be given to Mr. P. K. Misra, Advocate. It was given and accepted. An affidavit (A-41) filed on 30th January 1992 on behalf of Wing Commander Narendra Pratap Narain Singh, challenged the authority of Mr. P. K. Misra, Advocate to act as counsel for Padma Kumari Devi, his mother. This affidavit, alleges that Ajit Singh Panwar instructs Mr. P. K. Misra, Advocate, Mr. P. K. Misra Advocate, or Ajit Singh Panwar who acts on a

power of attorney would not appear before the court when this affidavit was filed.

15. These matters now raises serious questions which must be answered before the case itself can be decided on merits.

16. With this background that court has given its anxious consideration on the factors which have become issues in this case and the scope of the proceeding if the circumstances continue to remain as they are. By now, clearly, the issues have been high-lighted between the adversaries, if there are any, and if the case is to proceed any further the court must reflect on certain aspects of this case :

1. What is the status of the person who holds the power of attorney in a testamentary case either for succession, Letters of Administration or probate.

2. Who will give the evidence, the person who gives power of attorney or the holder of the power of attorney.

3. If the person who may have given the power of attorney cannot appear by reason of mental or legal incapacity and infirmity, what is the function of the court ?

17. In a suit, at any stage of the proceeding the court may require the parties to appear. The stage had arrived in this case that they appear before the court and it was so ordered on 11 December, 1991. A mystery surrounds the non appearance of Padma-kumari Devi, brought to Allahabad but thereafter not produced in court.

18. Why was Padmakumari Devi being kept away from the Court ?

19. The court was told that she was very tired and an undertaking was volunteered, by applications (A-31, A-33) one supported by an affidavit, that she would appear on 23 January, 1992. Even then she was not permitted to appear in court.

20. Can Padmakumari Devi comprehend for herself? Tht she may not, the foundations were being laid down by Ajit Panwar himself, the man who claims to act on her, behalf by a power of attorney. It was he who was instructing counsel. Counsel taking instructions from Ajit Singh Panwar and claiming to appear for Padma Kumari Devi submitted that he had seen Padmakumari Devi for the first time on the Sunday of 19 January, 1992 and before that he had not met the lady who was supposed to be his client. Further, between the principal and agent, the status of the person who holds the power of attorney, is not beyond that of an agent. Thus, counsel had met the agent and taken instructions from him; but not the principal counsel, thus, could not with any responsibility make any statement or submissions on behalf of the principal Padma Kumari Devi -- the alleged petitioner. And then, regard being had to the circumstances, was she the petitioner? Was she perusing and monitoring the course and conduct of her litigation?

21. Adjournments were being sought to shift the date of appearance to yet another date. Mr. P. K. Misra, Advocate, was taking instructions from Ajit Singh Panwar, claiming to act on behalf of the old lady Padma Kumari Devi, when the latter was not capable of comprehending the course and conduct of a litigation which may not be of her making.

22. The doctor's certificate (A-33/10) only certifies that Padma Kumari Devi was too tired and that she needed medicines. A doctor need not certify this because the submission can even be made by counsel. The purpose of the certificate was to engineer an adjournment, and he utilise it to make a request for an adjournment to postpone the day for the appearance and attendance of Padma Kumari Devi. The doctor's certificate served its purpose to shifts the date for two days. One aspect is apparent from this certificate. It carries the thumb impression of Padma Kumari Devi. Why could not the signatures be affixed instead of the thumb impression? Should the court presume that Padma Kumari Devi did not have the capacity to append or put her signatures on the doctor's certificate, and that also in the presence of a doctor. The doctor did not report that Padmakumari Devi was ill or sick. He could not certify more than what he observed whatever he may have perceived and acquiesces his doctor's discretion to take a thumb impression of the patient he attended upon when a signature would do.

23. Let the two facts of Padma Kumari Devi being very tired and not being able to write, be put together. This can be deduced from the doctor's certificate. In addition to this, the learned commissioners report that Padmakumari Devi cannot rationale for herself, she cannot either hold her pen or write, her comprehension is low and she was harassed and tired from being shifted from place to place as if someone was imposing his or her will upon her. Between the report of the commission and the state of affairs presented by Ajit Singh Panwar, himself, it is clear that Padmakumari Devi is a person who regard being had to her old age at 87 years, is suffering from mental incapacity and infirmity to act for herself and is being made to act by the person who has her in his charge. When the commission placed it's report (A-34) before the court, on 22-1-1992 the court observed to the parties that it was contemplating that Padmakumari Devi be examined by a leading physician of the city. Dr. B. L. Agarwal, who was not available when the commission went to execute its business through a very senior counsel, Mr. R. P. Goel, Advocate assisted by an equally responsible counsel, Mr. Vipin Sinha, Advocate, they intimated the court that the doctor whose assistance the court sought was at Calcutta, and would arrive next day.

24. On 23 January, 1992 Ajit Singh Panwar had undertaken to produce Padmakumari Devi. It was his suggestion on an application that Padmakumari Devi would come on the 23rd January. She was produced. On that date Padmakumari Devi's son Narendra Pratap Singh applied to the court, (A-38), in effect, seeking custody of his mother to put her in good care of the military hospital with a prayer, in effect, that he be appointed his mother's next friend.

As the application did not disclose whether it was in the nature of a habeas corpus petition or an application for the appointment of a guardian, should it be a petition for a writ of habeas corpus, this court had it laid for order before the Hon"ble the Chief Justice. The Hon"ble the Chief Justice returned it to this Court with orders "Returned for consideration in Original Jurisdiction dealing with Company Testamentary and Matrimonial matter- Sd/- Hon"ble C. J. 29-1-1992". On this request of the son, for the custody of his mother, Mr. P. K. Misra, Advocate, counsel taking instructions from Ajit Singh Panwar, intimated the court that Padmakumari Devi has left Allahabad for Delhi with Mr. Ajit Singh Panwar for a medical check up and such were his instructions for intimating the court about it. Who gave the instructions, if Padma Kumari Devi cannot comprehend for herself?

25. Ajit Kumar Panwar finding that an application (A-35) had been moved on 23 January, 1992 by Wing Commander Narendra Pratap Singh, with a specific prayer that Ajit Singh Panwar be removed as an escort to his mother and that his mother be admitted to the military hospital at Allahabad, first arranged to apply for an adjournment for six weeks for filing a reply to this application. This is paper No. A-36 signed by Mr. P. K. Misra, Advocate. Then finding that six weeks for objections was not being granted on the application which sought removal of Ajit Singh Panwar as an agent who escort Padma Kumari Devi he had another application (A-37) placed on record. This application stated that counsel Mr. P. K. Misra, had not been able to contact either Padmakumari Devi or the holder of her power of attorney, the case be adjourned for six weeks. The adjournment of the case was being sought as 27 January, 1992 was also fixed for the appearance of Padmakumari Devi. This is acknowledged in the application itself. The record brought to court by the holder of the power of attorney itself lays bare that Padmakumari Devi was being removed from an inquiry by Court. Ajit Singh Panwar went from Allahabad to New Delhi. In attempting to tell the court by casting allegations and aspersions, in effect, that Wing Commander Narendra Pratap Singh, was to put it simply a bad man, two affidavits were sworn at New Delhi. These are relevant admissions on the controversy in issue. These are affidavits of Ajit Singh Panwar and an annexure and another affidavit affirmed by his mother-in-law, Smt. Manhar Kumari Panwar (She is also the daughter of Padma-kumari Devi and sister of Wing Commander Narendra Pratap Singh). The affidavit of Ajit Singh Panwar sworn at New Delhi on January 28, 1992 is A-40/3 and the affidavit of Smt. Mahhar Kumari Panwar also sworn on January 28, 1992 at New Delhi is A-40/50. The court notices certain admissions which are very relevant to the issues being considered in this order.

26. It is not in issue that Padmakumari Devi is very old, weak, infirm and suffers from a mental infirmity and incapacity. Apart from what the commission reported to the court, Ajit Singh Panwar acknowledges in his application A-31 signed by his counsel, Mr. P. K. Misra, Advocate, that Padma Kumari Devi is old at 87 years, exhausted and cannot attend court on 21 January, but would on 23 January, 1992 another Application A-33 repeats the submission, except that the affidavit

is filed by Ajit Singh Panwar. This shows that Padmakumari Devi was in Allahabad and yet could not attend court. A-40 is an application by which Mr. P. K. Misra, Advocate, seeks dismissal of the prayer Wing Commander Narendra Pratap Singh for having his dismissed case restored. The application accompanies the affidavit A-40/3 sworn by Ajit Singh Panwar at New Delhi. Paragraph 5 of the affidavit accepts that Padmakumari Devi has now become very old and is being looked after by the deponent, that is, Ajit Singh Panwar. The application of Mr. P. K. Misra, is accompanied by a supporting affidavit of Smt. Manhar Kumari (A-40/50.). In this affidavit it is accepted in paragraph 14 that Padmakumari Devi took seriously ill in the month of December, 1990 and it is further accepted in paragraph 15 that the old lady has now become very weak. Thus, there is no issue now that Padmakumari Devi is very old and about 87 years of age, ill, very weak, cannot look after herself mentally infirm and otherwise "suffers from mental incapacity and that she needs to be looked after.

27. Now another aspect Ajit Singh Pan-war took away Padmakumari Devi from Allahabad so that the court cannot enquire on her welfare further. The affidavit he affirmed at New Delhi reveals that he took Padma Kumari Devi from Allahabad to New Delhi without permitting her or arranging for her to appear before the court and he thwarted the concern of the court to enquire into the welfare of very old and weak and infirm person. Ajit Singh Panwar and his counsel were aware that the members of the family had been required by the court orders of December 11, 1991 to be present in court on January 20, 1992. On January 20, 1992 Mr. P. K. Misra, was making a statement that Smt. Manhar Kumari will be available and attend court on January 23, 1992 through learned counsel for Wing Commander Narendra Pratap Singh was submitting by placing a telegram (B-30) before the court that he had instructions to submit that Smt. Manhar Kumari Panwar had sent a message that she will not be able to come to Allahabad. The affidavit A-40/50 affirmed by Manhar Kumari Panwar before the Notary Public reveals that she came as far as New Delhi on or before January 28, 1992, but evaded appearance before the High Court at Allahabad on the date fixed. The affidavit of Manhar Kumari Panwar was prepared for being filed in this very case. It is not that Smt. Manhar Kumari Panwar was without notice of the proceedings. She chose to make submissions before the court by an affidavit but would not appear before the court. She came from Baroda in Gujarat to New Delhi to affirm an affidavit before a notary. But she would not come to Allahabad before the court when she was required to do so. Under law the conduct of Manhar Kumari gives rise to an irresistible presumption that she deliberately kept herself away from the proceedings of the court and though she may not be compelled to answer yet she knew that should she answer, the answers would be unfavourable to her. The law permits the court to presume such a state of affairs u/s 114(h). Smt. Manhar Kumari finding that her son-in-law as of dale is acting as an agent of Padma Kumari Devi, her mother, and that her mother is suffering from infirmness and mental incapacity knows that the agent authority will not hold. She is in collusion with her son-in-law to assist him to take charge of the assets

and properties of Padmakumari Devi and the estate and the goods of Mahendra Pratap Singh (deceased), Smt. Manhar Devi and Ajit Singh Panwar, that is, the son-in-law and the mother-in-law could not face enquiries of the court in the presence of the other two children of Padmakumari Devi -- Wing Commander Narendra Pratap Narain Singh and Nirmla Rani who were both present in court on January 20, 1992 and January 21, 1992, They evade the court.

28. Why take Padmakumari Devi with-out presenting her to court to a hospital in New Delhi when the court itself was contemplating that she be examined on commission by a leading physician? Further, her son had in any case made a formal prayer to the court that he be made his mother's next friend or guardian so that he could take his mother to the military hospital. Indeed this leads to a situation which gives the court the impression that Ajit Singh Panwar, or his counsel did not want Padmakumari Devi to appear at the Bar of the court nor did they desire any further inquiry and investigation by the court on the state of health, mental comprehension or otherwise of Padmakumari Devi. There is something which makes Ajit Singh Panwar afraid lest the truth be known. He has taken the law into his own hands and violate the rule of law also. He is harbouring a person who is feeble and old, and is not in a position to act for herself nor decide for herself, he has further prevented a party from not appearing in court and obstructed the order of the court. He has violated the proceedings of a court of law and has prevented the court from examining a party.

29. Both Ajit Singh Panwar and his counsel Mr. P. K. Misra, Advocate, were portraying to the court that they are acting on behalf of the principal, Padmakumari Devi and would not permit the court to make an inquiry on the extent and the content of their authority. In fact, they took up the position to present a state of affairs to frustrate the inquiry of the court, when reminded that it is the duty of the court to inquire on the bona fides of the authority of the holder of the power of attorney, both Ajit Singh Panwar and his counsel were either being uncooperative with the court or evading the court. It has already been narrated above and it is a matter of record that Ajit Singh Panwar kept away Padmakumari Devi from appearing before the court on further inquiry on the state of her health and mind. Mr. P. K. Misra, Advocaft, appeared whenever it suited him and disappeared when the proceedings did not suit him. All these are matters of record,

30. It is settled law that once the status of an agent is challenged, the court is obliged to inquire as to the agent's authority (1892) ILR 19 Cal 678 : 19 Ind App 135 (PC). A Division Bench of the Allahabad High Court in 1916 held that it is not only in principle that such issues must be decided by the trial court or the first court but that such matters must not be left undecided. The Division Bench of this court held that where an agent or an attorney's status is challenged, it is a serious question and it must be decided at the very first instance and "in our view it is not right for the first court who leave the investigation on that question

to the appellate court. Goswami Sri Raman Lalji Vs. Goswami Sri Gokul Nathji,

31. There is sufficient material on record to reveal that Ajit Singh Panwar is running away from the inquiry and is holding on to a litigation created and manufactured by him, in the name of a person (Padmakumari Devi) who is old, feeble, weak and mentally infirm and not in a position to think independently for herself. A power of attorney cannot go beyond the principal. But the general principle of this rule is that a principal must be in a position to take an authorisation and continue to exert his or her authority so that agent binds the principal. In the present case, there is a serious doubt whether Padmakumari Devi may have authorised in a state of mind which would give her independent disposition and continued to be a person who is normal and be a principal who is in a position to have a mind of her own or can comprehend for herself and has an agent on whom she has control. She is not, the circumstances have revealed. Ajit Singh Panwar was totally conscious that should the court make an inquiry the truth will be out and his status as an agent would be in jeopardy. Thus, he not only removed himself from the scrutiny of the court but also the lady on whose behalf he claims to be the agent. His counsel has made a statement that he had never met Padma-Kumari Devi except when she arrived in Allahabad in January. Last Counsel himself is not clear on whose instructions he was acting. This is not the end of the matter.

32. The entire "fight", as it were, is that the suit of Wing Commander Narendra Pratap Singh, dismissed for want of prosecution should remain dismissed. Who desires this ? Not the mother, Padmakumari Devi, as she is hardly in a position to comprehend. But, it is the so-called agent, the holder of the power of attorney, Ajit Singh Panwar, the agent of the principal. The reason; Ajit Singh Panwar is totally conscious that with Padmakumari Devi's mental incapacity and feeble health and the suit of Wing Commander Narendra Pratap Singh having been dismissed he may sit on the estate of Mahendra Pratap Singh (late son of Padmakumari Devi and brother of Narendra Pratap Singh), and, administer it at his will on behalf of Padma Kumari Devi, because without contest the case which Ajit Singh Panwar conducts on behalf of Padma Kumari Devi would become a non-contentious matter.

33. The recall of the order of dismissal in the suit of Narendra Pratap Singh, is a matter first between this plaintiff and court. Was counsel at fault or his client? Mr. Ambrish Sharma, Advocate, was counsel for Wing Commander Narendra Pratap Singh, since 1986. He filed the case. At the request of Wing Commander Narendra Pratap Singh and his present set of counsel (Messrs P.M. Gupta and M. S. Chauhan, Advocates) Mr. Ambrish Kumar Sharma, Advocate, appeared at the Bar on 30 January, 1992. Counsel taking instructions from Ajit Singh Panwar, Mr. P.K. Misra, Advocate was not present. Mr. Ambrish Sharma, Advocate, submitted that there was some communication gap between him and his client Wing Commander Narendra Pratap Singh and he would put this matter as simply as he has submitted and this aspect alone may not visit his client (now represented by

other counsel) with an order dismissing his suit for want of prosecution. Mr. Ambrish Sharma, Advocate, was available for any questions which may be asked from him by Mr. P. K. Misra, Advocate, who is instructed by Ajit Singh Panwar. Both were absent, and thus, would neither question nor examine Mr. Ambrish Sharma, Advocate.

34. After this whose interest is it to lay down a foundation of an ugly situation subversive to public justice and to obstruct and prevent substantial justice in the court considering the recall of a dismissal order against a party with the solitary and sole purpose of hearing the matter on merits? if it is Ajit Singh Panwar then his place is not beyond an agent even on what he claims as a status. His principal is old, feeble, weak, unable to comprehend and legally under a mental incapacity. If it is the counsel, then he must be cautioned that he has tread into dangerous territory in subverting public justice in being instructed by an agent while totally conscious that his client, Padma Kumari Devi is unable to instruct him, and the so called agent cannot exceed the principal's authority and the principal is unable to authorise. Thus, Mr. P. K. Misra's engagement to act for Padma-Kumari Devi has come to an end. All this unsavoury litigation was manufactured between mother and son driving a fissure between son and mother, brother and sister and sister and sister. All on a dead son's or dead brother's estate, is the creation of Ajit Singh Panwar. A feeble weak and an old mother who cannot comprehend for herself would not carry on such a beligerent litigation with her children.

35. What remains now is the status of Ajit Singh Panwar, the holder of the power of attorney.

36. in law the power of attorney which Ajit Singh Panwar carries with him assuming it was validly obtained is worthless now after the court has noticed the present state of, affairs and the state of health and the mental infirmity of his principal Padmakumari Devi. The power of attorney may have been good while it lasted. Only two people can depose on the credibility of this power of attorney, the one who gave it and the other who acted on it. Padmakumari Devi is not in a position to reflect or depose on the bonafides of the power of attorney. Her old age, mental incapacity and mental infirmity prevent her from deposing before the court.

37. The holder Ajit Singh Panwar cannot stretch a relationship which has ceased to exist. A very heavy burden lies on him to insist that the present relationship of principal and agent survives. His whole case rests on an affirmation that he acts on a power of attorney. The circumstances reveal beyond doubt that the principal cannot maintain the relationship of principal and agent. The law as given in Section 109 of the Evidence Act goes against Ajit Singh Panwar. Ajit Singh Panwar himself admits and his mother-in-law (Smt. Manhar Devi) corroborates that Padmakumari Devi is weak and mentally infirm and cannot comprehend for herself.

38. Further, the general principles of an appointment and authority of agents are not different for a power of attorney holder, than given in Chapter X of the Contract Act, 1872. Who may employ an agent? The answer is given in Section 183 of this Act: "Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent."

(Emphasis).

39. In law what applies to a minor also applies for persons found by the court on inquiry to be incapable, by reasons of any mental infirmity, of protecting their interests when suing or being sued. This is laid down in Order XXXII Rule 15. Padmakumari Devi, by now it is clear and beyond a reasonable doubt that she cannot act on her own. Who is her next friend or guardian? This Court, did not appoint Ajit Singh Panwar as a next of friend under Order XXXII. When the defendant or the gentleman opposing him challenged his authority, Ajit Singh Panwar ran away. If Ajit Singh Panwar could act on a power of attorney it has exhausted itself with the incapacity of his principal, Padmakumari Devi. Ajit Singh Panwar stretched his limits beyond the law.

40. Padmakumari Devi can only sue or be sued within the principles of law set by Order XXXII; through a "next friend" or a "guardian". Ajit Singh Panwar is not a next friend, with the old lady's son and daughters available. He is not a guardian, as the court has not appointed him. An infant (or for that matter a person with mental legal incapacity) may not take out a proceeding without assistance of next of friend because" on account of the infants supposed want of discretion and his liability to bind himself and make himself liable for costs. One of the perquisites of being a guardian or next of friend, in reference to the context, is that a person's interest must not be adverse to that of a minor (or a person with mental incapacity.) AIR 1942 All 150, (151)).

41. The law makes a provision to control and monitor a suit brought by or against minors and a person of unsound mind. The general principle which applies to proceedings brought on behalf of a minor or against him also apply to a person of unsound mind. This aspect of the law is provided under Order-32, while Rules 1 to 14 of this order is in reference to general principles in conducting or authorising a litigation on behalf of a minor, Rule 15 mentions in effect that what applies to and for a minor would also apply to a person of unsound mind, with the exception of Rule 2A. The inquiry is to be made by the court. Order 32 Rule 15 provides that the general principles relating to a suit by or against a minor apply to persons of unsound mind it also declares that though a person may not be adjudged as a person of unsound mind, it will include persons found by the court on inquiry to be incapable for reasons of mental infirmity in protecting their interest when suing or being sued. Thus, there is no doubt that this inquiry is to be made by the court in deciding whether a party before the court is either of unsound mind or incapable, by reasons of mental infirmity, in protecting his or her interest. The Allahabad High Court held 1988 All LJ 436 in one matter, that the court must hold a judicial inquiry that a party

whose interest are being litigated may be of an unsound mind and incapable of protecting his interest. Thus, there is no issue on settled law that mental incapacity of a person, so as not to be able to watch his or her interest in a litigation will be the subject matter of an inquiry by the Court.

42. The mental incapacity of Padma Kumari Devi is not in issue. She suffers from an incapacity upon which the court has already considered above and the person who hold her in bondage, Ajit Singh Panwar, evades producing her before the court, so as to thwart further inquiry on her welfare.

43. Ajit Singh Panwar is not a party, even if he could act on behalf of Padma Kumari Devi. But under the law he cannot give evidence on her behalf, Rule 15 of Order XXXII, as mentioned earlier treats a person with mental incapacity or of an unsound mind at par with a minor and the court is obliged to make a judicial enquiry so as to be satisfied that such a person is incapable of protecting his interest. A suit on behalf of a person with mental incapacity or unsound mind may be filed by the next of friend or guardian, but by leave and an order of a court.

44. A Division Bench of this Court, held, that if during the course of litigation the court finds on inquiry that anyone of the parties before it is by reason of unsoundness of mind or mental infirmity incapable of protecting his interest, the court is bound to take action under Order XXXII, AIR 1919 All 409). It is open to the court to seek assistance of a medical expert and it could compel a party to attend court for deciding the question. It could also direct such a person to be subject to examination by the medical expert. If the next of friend tries to nullify the effect of such an order by disobeying it, the court would find adequate means for enforcing it's order *Asha Rani Vs. Amrat Lal*, : *Balakrishnan Vs. Kalliyani*, The issue of unsoundness of mind or mental incapacity of the parties is primarily betwixt the court and the party and is certainly not a lis betwixt the parties themselves and a Division Bench of the Patna High Court observed *Smt. Godawari Devi Vs. Smt. Radha Pyari Devi and Others*, .

"The legislature in its wisdom has conferred a larger and paternal power on the court to see that each party has the capacity to safeguard its legal interest and it in no way handicapped by reason of any mental infirmity. It is equally significant to notice that this broad based power extends in cases of any mental infirmity and is not necessarily governed by the extreme situation of a person being of unsound mind altogether. This beneficial and, indeed, paternal power is wholly vested in the court and it is in its discretion alone, where it finds that any one of the parties is suffering from a weakness of mind, in proceed for taking steps to safeguard the interest of such party."

45. The Kerala High Court AIR 1959 Kerala 51 held that the enquiry contemplated by Order XXXII Ruie 15 is undoubtedly a judicial inquiry. It is for the Court to decide upon the manner in which and to the extent to which such an inquiry has to be conducted to enable it to come to a satisfactory conclusion as

to the mental condition of the party concerned.

46. The Madras High Court AIR 1949 Mad 292 held that when a matter in effect, of unsoundness of mind, within the meaning of Order 32 Rule 15 arises, the court "has ample jurisdiction to inquire into the question whether the person by reason of her (his) mental infirmity is incapable of protecting her interest or not.

47. The Punjab High Court, Asha Rani Vs. Amrat Lal, held that Order XXXII Rule 15 of the Code is explicit and postulates an inquiry into the mental capacity of the person suing or being sued. After the inquiry the court has to resort to the procedure of appointment of a guardian for a person found to be under a mental incapacity. If the court did not enter into such an exercise the proceedings of such a court would be a nullity and void and not merely voidable. The Punjab High Court was relying on a Supreme Court decision Ram Chandra Arya Vs. Man Singh and Another, .

48. The Allahabad High Court had already taken a similar view that should a court through ignorance not make an inquiry on the mental infirmity of a person and assume jurisdiction over him, the proceeding would be a nullity Bhondu Mal Vs. Thomas Skinner

49. Ajit Singh Panwar would not permit the court to make an enquiry. His counsel Mr. P. K. Misra, Advocate, assisted him in this effort. The court is constrained to make this observation notwithstanding the enquiry which the court is obliged to make to find out whether a person arrayed as a defendant is or is not of an unsound mind or mentally infirm as laid down under Order XXXII of the Code.

50. Preventing the court from making an inquiry into the mental infirmity of a party, by an agent or attorney is obstructing the course of justice. It is now clear that this obstruction comes from an agent and canvassed by his pleader or counsel. Order III Rule 1, the proviso to the Code is clear when it says, "Provided that any such appearance shall, if the court so directs, be made by the party in person". Both counsel and agent stepped beyond their authority. Then, under Order V Rule 3, the Code can require the defendant, the plaintiff to appear in person. Ajit Singh Panwar, and counsel taking instructions from him, were resisting this requirement of law.

51. The arm of the law is long and it has to be recognised. When there are issues, the court is obliged to inquire as the court has to return a verdict. Evading the court, once a matter has been brought into court is evading issues. To inquire, is for the purpose of arriving at the bottom of the controversy, the truth. Thus, the Civil Procedure Code, obliges the court, when the occasion demands, to cause an oral examination of a party or companion of a party (Order X Rule 2).

52. Order XVI Rule 7, gives the power to the court to require a person present in court to give evidence or produce documents, then and there, in his possession or power. Rule 14 permits the court to even summon strangers. Rule 16 does not

permit parties and witnesses summoned to depart except by leave of court. And, Rule 21 lays down that what applies to witnesses applies equally to parties summoned.

53. Blending with all these provisions of law, and the list is not exhaustive, is the general substantive law which obliges a Judge to strive harder to ascertain the truth and invests all the courts with power to put any question it pleases, in any form, at any time, of any witness or of the parties, about any fact relevant or irrelevant, and order the production of any document or thing; and neither party or their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, will be entitled to cross examine any party or witness to an answer on a question by the court. Only the judgment, must be on relevant facts duly proved. The exceptions are the privileged communications. This is the court's power to interrogate. This is prescribed in Section 165 of the Evidence Act, 1872.

54. If the lawyer or the litigant refused to participate in inquiries by the court or refuses or expresses inability to respond to the court's inquiries, then, there would be judgment on such a party straightway. These are the consequences of not co-operating with the Court, and is prescribed in Order X Rule 4, read with Order XVI Rule 20. Consequences of violation may visit a party or a witness with penal consequences even in interlocutory proceedings, and the court may order attachment as if it were a matter arising on an execution of a decree; this is prescribed under Order XVI Rule 13.

55. For the benefit of learned counsel who takes instructions from an agent but knows alongwith the agent that the principal cannot act for reasons of mental incapacity, infirm and unsound mind and that the agent's authority to act has ceased, the court painfully draws his attention on the role of a lawyer as has been consistently held by courts. These are the views of the courts; counsel are not merely agents of parties, but are officers of court expected to assist in the administration of justice and sustain unimpaired dignity of courts by all means in their power Advocate General of Madras Vs. Amanullakhan, Advocate, Salem 1, . Lawyers are custodians of civilisation, they are to discharge their duties with dignity, decorum and discipline Hargovind Dayal Srivastava and Another Vs. G.N. Verma and Others, . Before tall claims are made which cannot stand against law and the Constitution, those that make them should reasonably be sure that they are right State of Punjab Vs. Satya Pal Dang and Others and Baldev Parkash and Others,

56. Putting all these aspects together, the court was conscious that the two cases before the court surround and envelope a family. In the case which has been converted into a suit (Suit No. 2 of 1988), a brother seeks Letters of Administration on his elder brother's estate. This case was filed, as Testamentary Case No. 13 of 1986. As a counter blast to this case filed by Wing Commander Narendra Pratap Singh two things happened -- a caveat was entered to object to the Wing Commander receiving Letters of Administration on the

estate of his brother and simultaneously another case was filed (Testamentary Case No. 27 of 1987) by the same caveator that the will authorises this caveator to obtain charge of the estate of the late Mahendra Pratap Singh. It is this caveator who has been put into court by Ajit Singh Panwar. The caveator is an old and feeble lady, mentally infirm and otherwise frail in health, as reported to the court and has been put up as a front to thwart to a son holding share of the estate of his brother. A lis has been created between the son and the mother. The mother is prevented from appearing in court or being examined by a doctor under the directions of the court. It is Ajit Singh Panwar who puts himself in front as an obstruction (a) to prevent Wing Commander Narendra Pratap Singh from receiving charge of the estate of his brother and (b) preventing the court from having access to the old lady whom he represents under a power of attorney. The details are already contained in the resume of proceedings narrated in this order.

57. Finding that the matter concerns the family, this court was obliged not to ignore Order XXXII-A. Order XXXII-A governs "Suits and Proceedings relating to matters concerning the family". Rule 2 permits the court to hold proceedings in camera should the court so desire, and it is mandatory to do so if either parties so desire. The court is under a duty by Rule 3, to make efforts for settlement and if this is reasonably possible, this rule guides the court to adjourn the proceedings to enable attempts to be made to effect such a settlement, it is for this reason that the court adjourned proceedings on December 11, 1991 to strive for a settlement, if there really be an issue in this family matter. Order XXXII-A is as much applicable to a suit or proceeding instituted by a member of the family relating to wills, intestacy and succession. The present cases are such proceedings. The only question was whether the case filed by Padma Kumari Devi or her opposition to her son is, in effect, opposition by her or is she being led to oppose by some one else?. In a strictly family matter the court finds out that Padma Kumari Devi had virtually been set up to manufacture a lis between the son and the mother when none may exist. The person who misleads Padma Kumari Devi is Ajit Singh Panwar. The matter will remain in the family and all the members of the family have yet to see the court.

58. Ajit Singh Panwar is committing an immoral and an unethical act by acting on a power of attorney of a principal whom he knows is mentally unsound, weak, suffers from mental infirmity and has no legal capacity to authorise. This is like continuing to act on a power of attorney of a dead man. If Ajit Singh Panwar continues to act on this power of attorney his action will be writ large with fraud, misappropriation cheating and criminal breach of trust. He claims to act for Padmakumari Devi. She can neither comprehend nor take care of herself nor safeguard her assets and properties. Her mental incapacity and frail health is acknowledged by Ajit Singh Panwar. His principal in her present mental state and health, neither can take accounts from her agent nor the agent render accounts to her.

59. Padma Kumari Devi, in her present state is without next of friend and now that her health and mental state is known to this court, it is not a next of friend that has to be appointed but a guardian. As of date no court has made such an order nor it has been reported on the record that any Court, has. The Allahabad High Court is one of the charter High Courts established by the Letters of Patent of 1866. This High Court is invested with special jurisdiction in Insolvency and in Admiralty, Testamentary and Matrimonial matters and over infants, idiots and lunatics. They were powers which were reserved with Charter High Courts. What is reserved for the Calcutta High Court was ordained by the Letters Patent for the High Court of Judicature at Allahabad. Clause 12 mentions that this High Court would have like powers and authority as is exercised in Bengal Division of Presidency of Fort William by the High Court of Judicature at Fort William in Bengal. A Full Bench of the Allahabad High Court *Reeta Rani Singh Vs. Raghuraj Singh*, made it abundantly clear that these powers which are vested in the Allahabad High Court has not made its jurisdiction, in reference to the context, a dead letter. The Full Bench reserved to the High Court its jurisdiction and power to appoint a guardian for those who were without one in the class of minors, persons with unsound mind and mentally infirm and with a legal incapacity, like lunatics and idiots.

60. Thus, this Court assumes jurisdiction over the person of Padmakumari Devi and until further orders are made by this Court or by any other Court by leave of this Court, she is placed under the guardianship of the District Magistrate and Collector, Dehradun. Ajit Singh Panwar shall not be her escort. The District Magistrate and Collector, Dehradun, is her guardian until further instructions from this Court. He shall take Padmakumari Devi in his custody and care and place her in a good hospital. Through his good offices, the District Magistrate and Collector, Dehradun will convey to the military authorities in Dehradun a request on behalf of the High Court, that regard being had to the circumstances that Padma Kumari Devi is the mother of a retired air force officer and also the mother of a daughter who is married to the Commander-in-Chief of the Nepal Army, they may consider giving her medical care and nursing facilities until between this son and daughter, that is Wing Commander Narendra Pratap Singh (Retired) and Nirmala Rana, one of them or both seek custody of their mother by leave of this Court. The properties and assets which stand in the name of Padmakumari Devi or are in the hands of Ajit Singh Panwar, are attached to the Court of the District Judge, Dehradun, and such properties, until further orders of the Court are custodia legis. Ajit Singh Panwar is bound to disclose the properties, moveable and immovable, to the District Judge, Dehradun. The District Judge, Dehradun, may independently make inquiries on the assets of Padma Kumari Devi whether alienated or standing in her name. In making these inquiries the District Judge may issue a proclamation and may order the presence of anybody for the purposes of receiving information and further is authorised to write to any authority in collecting information on the assets which stood in the name of Padmakumari Devi and continue to be recorded in the name

of Padmakumari Devi. The inquiry report of the District Judge will be made available to this Court within six weeks.

61. The power of attorney of Ajit Singh Panwar or any other power of attorney which may have been executed by Padmakumari Devi in his favour and a copy of which is appended to the affidavit and marked as paper No. A-40/24/25/26/27 is declared as null and void and not capable of being acted upon. The District Judge, Dehradun, is directed to intimate the Sub-Registrar, Dehradun, that this power of attorney registered with the Sub-Registrar, Dehradun is cancelled. The District Judge, Dehradun; thereafter shall cause a proclamation to be issued to that effect.

62. The proclamation aforesaid, if needed, may be issued in a newspaper having wide circulation at Dehradun and in addition two national newspapers one in Hindi and the other in English.

63. As case No. 27 of 1987 was filed on behalf of Padmakumari Devi but without a next of friend or guardian and Padmakumari Devi suffers from mental infirmity and unsound mind, a fact on which there is no issue. Ajit Singh Panwar who continues to conduct cases on the basis of power of attorneys and the said Ajit Singh Panwar, is neither a guardian nor a next of friend of Padmakumari Devi, as the record reveals that his interest is adverse to that of Padmakumari Devi, and he has obstructed the course of justice and prevented the Court from making enquiries and ascertaining the truth, the case filed by him or by the counsel whom he instructs, shall be taken off the file. As both Ajit Singh Panwar, acting on a power of attorney and counsel who take instructions from him appear and keep away from Court at their choice this Court will consider costs under Order XXXII, Rule 2, against one or either of them, later, let this be a notice to them.

64. The aforesaid Ajit Singh Panwar, is called upon by this Court to furnish security for payment of costs as he may have drawn and charged to the assets of Padmakumari Devi to create a litigation on the estate of the late Mahendra Pratap Singh which he seeks from the principal, who by her mental infirmity and unsound mind, cannot hold assets and properties, including her own. Ajit Singh Panwar shall deposit costs as may be assessed and determined by this Court. Later, for pursuing Testamentary Case of 27 of 1987 and for opposing the plaintiff in suit No. 2 of 1988 and for his acts and omissions as an agent when he was fully aware that the person whom he claimed as his principal was not in a position to authorise him. Further, as he holds charge of Padmakumari Devi's assets and properties, he has to account for them to this Court. The power of attorney in favour of Ajit Singh Panwar describes Padmakumari Devi as owning "Vast amounts of money in the form of Fixed Deposits and Savings Bank accounts in banks in my own name and also own other moveable properties like jewellery, household effects, cash etc. as also Immovable property in the form of agricultural land and residential premises in village Adhojwala District Dehradun, standing in my own name". It is the case of Ajit Singh Panwar that Padmakumari Devi owns large and colossal assets, monies, jewellery and real estate. On her

mother's properties, her son Wing Commander Narendra Pratap Singh, relying on . record, says in his application/affidavit (A/28) in paragraph 8 that his "mother belongs to a vary wealthy family of Nepal, is hardly educated, has become very old and infirm and is possessed of immense wealth as is also evident by the undisputed will of the late father of the applicant, a photo-stat copy. Whereof is annexed hereto as Annexure 1". Thus, for costs and accountability of her assets and until accounted this Court considers that it would be a modest sum, that Ajit Singh Panwar shall, as an ad interim measure directed to furnish security, to the satisfaction of the Registrar, High Court, on an amount for Rupees Ten Lakhs within six weeks from today.

65. The estate of the late Mahendra Pratap Singh regard being had to the facts and circumstances already noticed by the Court is attached to the Court of the District Judge, Dehradun, until further orders of the Court. For the purposes of attachment for identifying the properties a copy of the plaint in Suit No. 2 of 1988 and a copy of petition in Testamentary Case No. 27 of 1987 shall be forwarded by the Registrar, High Court, to the District Judge, Dehradun.

66. The Registrar, High Court, will send a letter of request u/s 77 of the CPC to Nirmala Rana, daughter of Padmakumari Devi, who appeared in this Court on January 20 and 21, 1992, if she would be kind enough to depose before the Court on a date which she may indicate to the Registrar, High Court, between 6 and 17 July, 1992. This Court issues this "letter of request" as Shrimati Nirmala Rana, the Court has already been given to understand is a citizen of Nepal, and resides in Kathumandu, Nepal.

67. Application A-28 seeking recall of the order of the dismissal of the suit for want of prosecution, the Court is satisfied, regard being had to circumstances noticed by this Court in this order, and earlier orders noticing the proceedings between 11 December, 1991 and as of date in the interests of substantial justice, enquiry and good conscience has to be allowed, with costs, which this Court shall determine subsequently.

68. The Registrar will intimate the authorities concerned, as referred to in this order, of the directions given by the Court, forthwith.

69. List before this Court, to receive the report of the Collector and District Magistrate, Dehradun and District Judge, Dehra-dun, immediately after six weeks.

70. Reference orders of the Hon''ble the Chief Justice, dated 29 January, 1992, on application A-38 of Wing Commander Narendra Pratap Singh (Retired) seeking, in effect, custody of his mother, Padmakumari Devi, let a copy of this order be placed before the Hon''ble the Chief Justice for his perusal.

71. Order accordingly.