



2024:KER:66729

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

TUESDAY, THE 3RD DAY OF SEPTEMBER 2024 / 12TH BHADRA,

1946

OP (FC) NO. 156 OF 2024

ORDER IN IA 3/2022 IN OP NO.288 OF 2020 OF FAMILY

COURT, CHAVARA

PETITIONERS/PETITIONERS/RESPONDENTS:

- 1 VINESH, AGED 37 YEARS
S/O VISWAMBHARAN, VINESHBHAVANAM,
AYANIVELIKULANGARA NORTH,
AYANIVELIKULANGARA VILLAGE,
KARUNAGAPPALLY, PIN - 690573.
- 2 VISWAMBHARAN, AGED 65 YEARS
AYANIVELIKULANGARA NORTH,
AYANIVELIKULANGARA VILLAGE,
KARUNAGAPPALLY, PIN - 690573.
- 3 PUSHPAMANI, AGED 60 YEARS,
AYANIVELIKULANGARA NORTH,
AYANIVELIKULANGARA VILLAGE,
KARUNAGAPPALLY, PIN - 690573.

BY ADVS.
UMMUL FIDA
C.IJLAL



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P.PARVATHY
JAI GOVIND M.J.

RESPONDENT/RESPONDENT/PETITIONER:

RAJI RADHAKRISHNAN, AGED 28 YEARS
D/O.SUSHAMA, RAJI BHAVANAM,
AYANIVELIKULANGARA NORTH,
AYANIVELIKULANGARA VILLAGE,
KARANAGAPPALLY, PIN - 690573.

BY ADVS.
JOSEPH GEORGE
P.A.REJIMON(K/700/2017)
NIKITA NAIR C.S.(K/002018/2022)
VIVEKJOS PUTHUKULANGARA(K/834/2024)
SAJEEV JOHN T.(K/000631/2022)

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 03.09.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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'C.R.'

JUDGMENT

Devan Ramachandran, J.

As we begin, we notice that this Original Petition describes the respondent to be "Deaf and Dumb". We find it necessary and requisite to impress that the afore description is a relic from the medieval era.

2. The Greek Philosopher Aristotle used the phrase to refer to hard-of-hearing people and argued that they were incapable of being taught; if learning; and if reasoned thinking (source:Deaf Heritage, by Jack Gannon, 1980)

3. In later years "dumb" came to mean



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silent, but remained offensive because it also connotes cognitive disablement - stemming from the illusion that if one cannot use voice, you are probably not smart.

4. The terms afore are ethically and technically inaccurate; and now recognised internationally to be offensive - particularly by the community. The term "Hearing-impaired" is also no longer accepted, though it was earlier preferred, as being politically correct. This was a well meaning term, but now not accepted because 'impaired' means hindered or damaged.

5. The most accepted terms now are 'deaf' and 'hard-of-hearing'; and we will use only them in this judgment.



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6. Hard - of - hearing communities are diverse, with people identifying as Deaf, Deaf- Blind, Deaf - Disabled and Late-Deafened. How people identify themselves is personal and may reflect the degree to which they can hear, or the relative age of onset. For example, those who became deaf later in life may identify themselves as Late-Deafened; while those with vision loss to some degree also, may define themselves as 'Deaf Blind'.

7. It is to be remembered that with all the technological advances of these times, including surgical Cochlear implants, Audio Converters, Sign to text Converters, lip reading converters, etc., the larger number



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of the hard-of-hearing commence their life in school under grave disadvantages, which are - most often - imperfectly represented as being ignorant of language.

8. A few centuries prior, hard-of-hearing persons had been treated as though they were cognitively impaired. This probably stemmed from early theories linking intelligence with spoken language and because most early learning - as well as the transmission of cultural and traditional knowledge - was accomplished orally. Axiomatically, persons who were hard-of-hearing and consequently unable to verbally communicate, were invariably excluded from educational opportunities by the prevailing



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culture; and thereby reduced to being with few, if no, civil rights.

9. Fortunately, by about the 16th century, society's view began to change. The Spanish monk, Pedro Ponce de Le'on, established the World's first school for the deaf at the monastery of San Salvio near Madrid. He developed methods to teach reading, writing and speaking to persons who were hard-of-hearing, in order to prepare them to lead a normal life. His methods laid the foundation for the development of the sign languages - now the predominant manual languages in contemporary culture.

10. The work of de Le'on was broadened and extended during the 18th Century by



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Charles Michel de l'Epee, who established a public school for deaf students in France in 1771. He is also credited with writing the first French sign language dictionary.

11. In 1817, Thomas Gallaudet, an American Theologian, along with a French teacher by name Laurent Clerc, founded the first American School for the deaf; and translated the French sign language for the use of American students.

12. The old feudal rules of the English Common Law, as also applicable to most of Europe, did not grant the deaf the same rights of inheritance as others; and were then afforded only upon proof of want of requisite intelligence. As to what would be



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deemed satisfactory proof of intelligence, there was evidently room for diversity of opinion, but by the march of time such rules have now faded away.

13. To possess a language is to articulate ideas; to own a machinery to combine thoughts and exhibit their relations to each other. Every speaking individual - even with ordinary intelligence - therefore, starts with an advantage over those who do not possess lingual skills; though with comparable or better cognitive capacity.

14. Hard-of-hearing people, consequently, have difficulty communicating with those who do not know sign language; and many a times feel isolated from society.



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15. The afore, rather long, prolegomenon has been necessitated because this case porpoises the challenges that a hard-of-hearing person may have to encounter in litigation.

16. The respondent in this case filed OP (Money) No. 288/2020 before the learned Family Court, Chavara, seeking return of certain gold ornaments and impelling a fiscal claim against the petitioners herein.

17. Since, admittedly, the respondent is a person hard of hearing and therefore, unable of effective verbal communication, she moved the Original Petition, showing herself to be represented through a Next Friend - who is stated to be a close relative;



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accompanying it with an application to allow the said person to prosecute the Original Petition on her behalf.

18. The afore led the petitioners to move I.A.No.3/2022 in OP(Money)No.288/2020, asserting that the Original Petition filed by the respondent through a Next Friend, without obtaining the leave of the Court, is not maintainable; and contending that, in the absence of an inquiry having been done by the Court under Order XXXII, Rule 15, of the Code of Civil Procedure (CPC), the respondent cannot be allowed to prosecute it any further.

19. The afore I.A. was opposed by the respondent; and it finally led to the order



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impugned, namely Ext.P3, whereby, the learned Family Court, Chavara, held that, since there is not even a whisper against the respondent that she is a person of unsound mind, incapable of protecting her interests, the said application deserves no merit. It consequently dismissed the application through the impugned order, which is now challenged before us.

20. Indubitably, at this stage, we are not expected to enter into the merits of the rival contentions of the parties, except on the question of the maintainability of the Original Petition.

21. As evident from the afore narrative and as is also argued vehemently



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before us by Smt.Ummul Fida, the specific predication of the petitioner is that the Original Petition by the respondent - showing herself to be represented through a Next Friend - cannot be allowed to be prosecuted because no inquiry under Order XXXII, Rule 15, of the CPC has been conducted.

22. *Au contraire*, Sri.Joseph George - learned counsel for the respondent, argued that the findings of the learned Family Court are irreproachable because, admittedly, his client is a hard of hearing person, without the capacity of verbal communication; and hence fully deserving of being allowed to prosecute the Original Petition through a Next Friend.



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23. Sri. Joseph George then pointed out that, none of the provisions of Order XXXII of the CPC made it incumbent upon his client to approach the Court for leave to prefer the Original Petition through a Next Friend; and that the argument to such effect, if any, is fallacious. He then contended that the inquiry under Order XXXII, Rule 15, of the CPC is only for the benefit of the person who is hard of hearing and unable of verbal communication; and hence, when the said person himself vouches before the Court that he/she requires a Next Friend to represent him/her, such an inquiry becomes an empty formality and nothing more because, it has been declared unequivocally by this Court in



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Gopakumar v. Madhusoodanan Nair [2023 (6) KLT 111]; and in *Raveendran v. Sobhana* [2008 (1) KLT 488], that the afore provisions will have to be construed liberally because, at the end of it all, what is relevant is only whether the parties are facilitated a chance to effectively prosecute or defend the litigation, as the case may be. He thus prayed that this Original Petition be dismissed.

24. We have given the rival contentions of the parties very anxious consideration because, we are also sure that it raises certain very pertinent questions.

25. The facts involved are not really in dispute because, it is conceded by both



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sides that the Original Petition was filed by the respondent through a Next Friend; *albeit* without any enquiry under Rule 15 of Order XXXII of the CPC having yet been conducted by the Court.

26. The singular question impelled before this Court for consideration is whether the learned Family Court was obligated to conduct an inquiry under Order XXXII, Rule 15 of the CPC, nevertheless the fact that the respondent sought the assistance of a Next Friend because she is admittedly hard of hearing and unable to verbally communicate.

27. As rightly argued by the learned counsel for the respondent - Sri. Joseph



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George, in *Gopakumar* (supra), a learned Judge of this Court had examined the applicable forensic provisions in detail, to hold that what it protects are the rights of the litigant who is unable to hear or to speak clearly; and hence that it has to be construed very liberally. In other words, the affirmative findings of this Court are to the effect that, when a person seeks the assistance of a Next Friend on the ground that he/she has a problem as afore, it ought to be granted, rather than be denied.

28. In fact, the opinion of the learned Judge as afore, was guided to a large extent by the earlier judgment of this Court in *Raveendran* (supra). In the said precedent,



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this Court went to the extent of saying that, even in the case of a person who is hard of hearing and unable to verbally communicate, the Court is bound to conduct a preliminary inquiry to ascertain whether he/she is capable of protecting his/her interest without the assistance of a Next Friend. The *leitmotif* of the afore declaration is unmistakable because, what is acme and relevant is the interest of the litigant, who is hard of hearing and unable to verbally communicate, rather than it being impelled as a technical requirement or attack - as the case may be.

29. In *Mary v. Leelamma and Another* [2020 (4) KLT 242], delivered by another



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learned Division Bench of this Court, these issues had been again considered in detail, especially the question as to whether a person who is hard of hearing and incapable of verbal communication, should also be given the benefit of the provisions of Order XXXII, Rule 15 of the CPC. This was answered affirmatively; and held incontrovertibly that, that when a person seeks such assistance, it ought to be granted and that it is the duty of the Court to ensure that such is not denied.

30. Interestingly, in the said case, an argument was also raised that an Original Petition filed without leave for the party to sue through a Next Friend is not



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maintainable; but this has been answered to the negative, holding that this is not a technical requirement, but a provision with a laudatory intent of enabling the litigant suffering from the afore problem, thus to protect his/her interests effectively.

31. Travelling through the case at hand, the Original Petition before the learned Family Court has been filed by the respondent through a Next Friend, averring specifically that she is hard of hearing and incapable of verbal communication; and thus requiring such assistance.

32. When one examines the provisions of Order XXXII, Rule 15 of the CPC, it is ineluctable that the provisions of Rules 1 to



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14, except Rule 2A of the said Order, would apply to persons who are incapable, either by reason of mental infirmity or of any other, of protecting their interest, when suing or being sued; thus to be assisted by a Next Friend. When the affirmative tenor of the provisions is apodictic, it is the duty of the Court to ensure that the parties are sufficiently protected and that their interests are guarded, as would be required in the case of any other litigant who do not have physical or other infirmity.

33. When one evaluates Rule 15 of Order XXXII very closely, it commences saying that Rule 1 to 14 thereof, except Rule 2A, shall apply to persons adjudged, before or



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during the pendency of the suit, to be of unsound mind; and also to persons who, though not so adjudged, are found by the Court, on enquiry, to be incapable, by reason of any mental infirmity, of protecting their interests when suing or being sued.

34. The afore precedents have all examined the word 'mental infirmity', to declare that it is not merely a cognitive impairment which is attracted within the sweep of the aforesaid protection; but also any other, which would cause an impediment to a litigant or a party in protecting their interests, while suing or being sued.

35. That being said, nowhere in the provisions of Order XXXII, Rule 15 of the CPC



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does it make it incumbent upon a person hard of hearing or incapable of verbal communication, of seeking the leave of the Court to maintain an Original Petition through a Next Friend, as a condition preceded.

36. On the contrary, Rule 15 of Order XXXII, renders it limpid that its provisions would apply to every person who is found by the Court to be incapable of protecting their interest, either before or during the pendency of the Suit. To paraphrase, it is the obligation of the Court to ensure that every litigant before it gets the best opportunity to defend or prosecute the Suit; and this obligation is then edified on the



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inviolable duty to conduct necessary statutory inquiry to affirm it.

37. As far as this case is concerned, as we have already said above, the respondent admits that she is hard of hearing and unable to verbally communicate; and she has presented the Original Petition through a Next Friend, citing such cause.

38. The contra-assertion of the petitioners - made insinuatingly - is that this is not a case where it can be construed that the respondent is represented by a Next Friend; but, in fact, by a Power of Attorney Holder, however, without producing such power on record. The argument is that, otherwise, the respondent would have come forward to



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submit herself to an enquiry by the Court, to verify whether her interests would be protected without being represented through a Next Friend, solely because she is hard of hearing or incapable of verbal communication.

39. We are afraid that we cannot find favour with the afore contra argument because, as we have already seen above, it is the duty of the Court to ensure that every party and every litigant before it obtains equal and effective opportunity of protecting their interests, while being sued or when suing. When the respondent affirms that she requires a Next Friend, we see no reason why she should be denied it in any manner. This is the spirit of the declarations of the



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afore precedents, and we are certainly guided and bound by it affirmatively.

40. The afore being so luculent, solely to dispel any argument from the perspective of a "Devil's Advocate" - in a manner of speaking; and since it has been *sotto voce* argued that the impugned order cannot be found to be in error because the respondent herself has appointed Next Friend, we deem it necessary to answer this, to avoid any ambiguity.

41. In an abstract sense, when a person hard of hearing and, therefore, incapable of verbal communication, seeks the appointment of a Next Friend, it can be argued that this has to be acceded to



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automatically. Perhaps, in such a view, it can also be argued that an enquiry under Order XXXII Rule 15 of the CPC is only an empty formality and hence that it is not so required.

42. We are, however, of the firm view that the statutory enquiry is always necessary because it vests competence with the learned Court to decide the requirements to the litigant and to ensure that he/she gets a level playing field, by being given the requisite and unexpendable facilitation to conduct the case.

43. The enquiry being a statutory one and since it is intended for the benefit of the person seeking the appointment of a Next



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Friend, we are firm in our mind that it can never be dispensed with and will have to be necessarily conducted by the learned court in the manner, as is forensically postulated. We cite with approval the judgment of a learned Judge of this Court in *Rasheeda v. Nazeer and Others* [2011(3)KLT 218], which crystallly declared that the enquiry afore is mandatory.

44. Before we close this judgment, we must also record that, reading through the impugned order, an adscititious fact has been disclosed to our notice, which has not been pleaded. This is that, the first petitioner is also stated to be a person hard of hearing and incapable of verbal communication; and this factum is conceded to by Smt.Ummul Fida



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also. Obviously, the obligation of the Court, to conduct an enquiry on behalf of the said person - if he is to make an application for such or even otherwise - also becomes projected. This, of course, is a matter the learned Family Court may have to consider in due course.

45. In summation, we are without doubt that the learned court was enjoined to conduct a statutory enquiry, as mandated under Order XXXII Rule 15 of the CPC and there can be no conflict of view to this, going by the binding and other precedents covering the field.

In the afore circumstances, we allow this Original Petition and set aside the



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order impugned; with a consequential direction to the learned Family Court to conduct an enquiry under the provisions of Order XXXII, Rule 15, of the CPC, thus culminating in an appropriate order, without any avoidable delay.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE

akv



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APPENDIX OF OP (FC) 156/2024

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF O.P(MONEY) 288/2020 ON
THE FILE OF THE FAMILY COURT, CHAVARA
27/05/2020
- EXHIBIT P2 A TRUE COPY OF THE PETITION IN I.A NO.
03 OF 2022 IN O.P(MONEY) 288/2020 ON
THE FILE OF THE FAMILY COURT, CHAVARA
12/12/2022
- EXHIBIT P3 A TRUE COPY OF THE ORDER DATED
19/07/2023 I.A NO. 03 OF 2022 IN
O.P(MONEY) 288/2020 ON THE FILE OF THE
FAMILY COURT, CHAVARA