

(2008) 08 CAL CK 0016**Calcutta High Court****Case No:** C.O. No. 1272 of 2008

Ac. Dhruvananda Avadhuta and

Another

APPELLANT

Vs

Ac. Artpremananda Avadhuta

and Others

RESPONDENT

Date of Decision: Aug. 22, 2008**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Biswanath Somadder, J**Bench:** Single Bench**Advocate:** P. Chaturvedi with Mr. U. Purkait and Mrs. R. Sinira, for the Appellant; Kishore Datta with Ms. Sumita Shaw for the Opposite Party No. 1, Mr. Asish Kr. Sanyal , with Mr. Abhra Mukherji for the Opposite Party Nos. 12 and 13, for the Respondent**Final Decision:** Allowed**Judgement**

Biswanath Somadder, J.

Heard the learned advocates appearing on behalf of the parties.

2. This is an application under Article 227 of the Constitution of India directed against an order dated 27th March, 2008 passed by the learned Civil Judge (Senior Division), Purulia, in Title Suit No. 122 of 2007.
3. The petitioners before this Court are the defendant Nos. 1 and 2 in respect of the suit pending before the learned Court below.
4. By the order impugned, the learned Court below, on an application filed by the plaintiff, praying for holding an enquiry with regard to the mental infirmity of the defendant No.2, allowed the same on contest and directed the defendant No.2 to appear in person before the Court for holding an enquiry as to whether he had been

suffering from any physical and mental infirmity and whether he had the capacity or capability of protecting the interest or the unity of the Ananda Marg Organisation and also whether he was of unsound mind or not. The learned Court below, by the order impugned, also constituted a Medical Board in order to ascertain whether the defendant No.2 had been suffering physical and mental infirmity and whether the said defendant had capacity or capability to protect the interest and unity of the Ananda Marg Organisation.

5. The learned advocate appearing on behalf of the petitioners submits that the impugned order has been passed by the learned Judge on an application of the facts or plaintiff without taking relevant material facts or evidence into consideration. He submits that the impugned order, passed by the learned Judge was based solely on the pleadings of the plaintiff in their application wherein a prayer was made for holding an enquiry as to the material infirmity of defendant No.2. The learned advocate for the petitioners relies on a judgment of Hon'ble Supreme Court in the case of Sharda Vs. Dharmpal, and submits that it is riot open to the Court to order a roving enquiry and it must have sufficient materials before it to enable exercise of its discretion for causing medical examination of a person. He further submits that the Court ought to have arrived at a finding that the plaintiff had established a strong *prima facie* case before passing the impugned order.

6. The learned advocate for the petitioners also relies on a Division Bench judgment of this Court in the Case of Smt. Usha Doshi & Anr. v. Suprava Sundari Devi & Ors., reported in Cal. LT 1994 (2) HC 483. Relying on this judgment, the learned advocate for the petitioners submits that although the provision of Order XXXII Rule 15 of the Code of the CPC entrusts the Court with the obligation of holding an enquiry to determine whether a person suing or being sued suffers from any mental infirmity, the onus to furnish materials to the Court to justify such an enquiry lies upon the applicant who alleges unsoundness of mind of that person and in the facts of the instant case no such relevant material was furnished before the learned Court below wherefrom the learned Judge could have formed an opinion on the basis of which he passed the order impugned. The learned advocate for the petitioners submits that the order impugned is liable to be set aside.

7. On the other hand, the learned advocate appearing on behalf of the plaintiff/opposite party submits that the impugned order does not suffer from any infirmity and the learned Court below had duly considered the application of the plaintiff wherein it was specifically contended that the defendant No.2, due to his old age and ailment, had become crippled, was running a very short memory, unable to recognizer others and was suffering from dementia and was not in a position to take any decision independently of his own. In this regard the learned advocate refers to the pleadings made in paragraphs 3 and 5 of the plaintiff's application. He further submits that the learned Court below, after taking due consideration of the facts pleaded in the plaintiff's application, as also the written

objection thereto filed by the defendant Nos.1 and 2, passed a reasoned order directing holding of an enquiry with regard to the physical and menial infirmity of the defendant No.2 by constituting a Medical Board. He further submits that the direction of the learned Court below for personal appearance of the defendant No.2 before the Court, cannot be said to be not in accordance with law.

8. The learned advocate for the plaintiff/opposite party also relies on the judgment of the Hon'ble Supreme Court in the case of *Sharda v. Dharampal* (supra) and submits that the Court is indisputably empowered to satisfy itself as to whether a party before it suffers from mental illness or not for the purpose of appointment of a guardian in terms of Order XXXII of the Code of Civil Procedure. He also relies on another judgment of the Hon'ble Supreme Court, rendered in the case of *Kasturi Bai and Others Vs. Anguri Chaudhary*, to reiterate the aforestated proposition of law with regard to discretion of the Court to cause an enquiry in terms of Order XXXII Rule 15 of the Code of Civil Procedure.

9. After considering the submissions made by the learned advocates of the parties and upon perusing the instant application and the order impugned and the judgments relied on, I am of the opinion that the point that is required to be considered and decided in the instant application is whether in the facts and circumstances of the instant case, the learned Judge exercised his jurisdiction in accordance with law, particularly under the provision of Order XXXII Rule 15 of the Code of Civil Procedure.

10. Before going into this aspect of the matter, it may not be out of place to have a look into the provision of Order XXXII Rule 15 of the Code of Civil Procedure, 1908, which is reproduced hereinbelow :

Order XXXII Rule 15 of the Code of Civil Procedure

"15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind. Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound Mind and shall also apply 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 interest when suing or being sued."

11. From a bare perusal of the above provision of law it is clear that the legislature, in its wisdom, has given wide discretion to the Court to cause an enquiry in order to ascertain whether a person, by reason of any mental infirmity, was incapable of protecting his interest (emphasis supplied) when suing or being sued. It is therefore clear that this provision of law has been kept in "the statute-book in order to ensure that a mentally infirm person's interest is adequately protected by the Court, when suing or being sued, and not for anything else.

12. To consider whether in the facts and circumstances of the instant case, the learned Court below was required to exercise its jurisdiction, at the plaintiff's instance, to cause an enquiry under the provision of Order XXXII Rule 15 of the Code of Civil Procedure, 1908, it is necessary to advert to the plaint.

13. The suit was instituted by the plaintiff originally against eleven defendants inter alia for declaration and permanent injunction. The principal prayers in the suit are as follows:

"(a) (i) decree for declaration that the defendant No.1 is not the General Secretary of Ananda Marga Pracarak Sangh for the year 2007-08 and is also not the Secretary of Central Purodha Board of Ananda Marga and have no legal right to issue any explanation notice to any of the purodhas of Ananda Marga including the plaintiff or upon any member of Ananda Marga Pracarak Sangha be passed in favour of the plaintiff and against the defendant No.1.

(ii) a decree for declaration that the explanation sheet dated 3rd May, 2007, letter dated 16/06/07 and explanation notice dated 05/10/07 issued by defendant No.1 and are illegal, void without jurisdiction be passed in favour of the plaintiff and against the defendant No.1 with direction upon defendant No.1 to constitute the Governing body according to the constitution of the Sangha.

(iii) A decree for declaration that the alleged fact finding committee consisting of defendant No.7, 9 & 10 is illegal, void, inoperative and the letter dated 10.06.07 containing charges against the plaintiff is also illegal be passed in favour of the plaintiff and against the defendant No.1,2,7,9 & 10.

(iv) a decree for declaration that the Central Purodha Board is the only Body by whom and under whose guideline/supervision the Central committee of Ananda Marga would be constituted be passed in favour of the plaintiff and against the defendant.

(b)(i) a decree for permanent injunction for restraining the defendant No.1 or by in the name of defendant No.2 from taking any action in any "Marga" of the organisation be passed against the defendant No.1 & 3 to 11.

(ii) a decree for permanent injunction restraining the defendants (1 & 3 to 11) from holding election of the Central committee of Ananda Marga without the resolution of present central Purodha as per list be passed in favour of the plaintiff and against the defendants."

In paragraph 11 of the plaint, the plaintiff has stated as follows:

That, it is pertinent to mention here that the defendant No.2 Ac. Sharaddhananda Avadhura has been elected as the Purodha Pramukha after the demise of the preceptor from the Purodhas and by the Purodhas and for last few years the organization is not functioning properly. The entire administration of Ananda Marga

and Ananda Marga Pracarak Sangh has been collapsed. The organization has been divided into group and the organisation is passing through great crisis. The defendant No.2 Ac. Shraddhananda Avadhura due to his old age and ailment has become crippled running very short of memory unable to recognize others suffering from Dementia and not in a position to take any decision independently of his own. He is unable to discharge his day to day official work even he is unable to perform his personal day to day duty without help of others. He is neither physically sound nor mentally. Taking advantage of his physical and mental inability the caucus around have has made Purodha Pramukha captive and utilizing him and his power according to their own whims. They are manufacturing documents in the name of Purodha Pramukha or which he himself has got no knowledge causing harm to the Organisation in various way, various controversies have been cropped up due to the mismanagement in the organisation owing to the inability and captivity of the Purodha Pramukha. The Organisation is now running in the hands and sweet will of the unauthorised, unconstitutional and extra constitutional persons and the Unity of the members as well as the Organisation have been suffering a lot. The Central workers, Board members are prevented from meeting with the Purodha Pramukha by caucus around him. The predicament has created a state of confusion, controversies and mistrust amongst one another in the organisation. All these gave birth of numbers of suits and cases.

14. The following statements have been made in paragraphs 3 to 7 by the plaintiff in his interlocutory application, wherfrom the impugned order emanates:

3. "That, the plaintiff in his plaint in para has stated that the defendant No.2 due to his old age and ailment has become crippled, running very short of memory, unable to recognise others, suffering from Dementia and not in a position to take any decision independently of his own. He is unable to discharge his day to day official work even he is unable to perform his personal day to day duty without help of others. He is neither physically sound nor mentally. So the plaintiff has filed this suit against the defendant through his next friend. Ac. Dhrubananda Avadhuta, the defendant No.1."

4. "That, the Defendants have filed their objection/show cause against the application of the plaintiff U/or, 39, rr. 1 & 2 read with section 151 CPC and the defendants in their objection in paragraph 8 have stated that the defendant No.2 is an old man but he is neither insane or a person of unsound mind, the plaintiff, having impleaded the supreme of Ananda Marga through next friend and by showing him as person of unsound mind and/or insane actually has shown his effrontery, he has shocked the sentiment of lakhs of Ananda Margiis."

5. "That, under the, aforesaid circumstances the defendant have denied the statement of the plaintiff regarding the physical and mental condition of the defendant No.2 and it has became necessary to ascertain whether the defendant No.2 is suffering from mental infirmity due to old age or otherwise and the said fact

can not be ascertained without an enquiry."

6. "That, to hold an enquiry in the matter, and to ascertain the allegation of the plaintiff, the defendant No.2 should be examined by the learned Court and the learned Court may also seek the assistance of an expert to adjudge as to whether the defendant No.2 is having a sound mind and capable of managing the affairs of the organisation and the Court Cases."

7. "That, for holding an enquiry by the learned Court, the defendant No.2 should be directed to appear before the learned Court personally and for holding such enquiry report of Medical Expert is also very helpful and as such the defendant No.2 should also be directed to appear before a Medical expert team to be appointed by the learned Court."

15. On the basis of the above pleadings; the plaintiff had prayed for necessary order for holding an enquiry as to the mental infirmity of the defendant No.2.

16. As of date, no written statement has been filed on behalf of the defendants, particularly defendant No.2, as submitted by the learned advocates for the parties.

17. The learned Court below, while referring to the decision of the Hon"ble Supreme Court in Sharda"s case (supra) and also other judgments cited by the parties went on to observe as follows:

" ... Having heard the submission of the learned advocates for the plaintiff as well as the other defendants as well as the added defendants and the intervenor and on perusal of the application of the plaintiff and the Written Objection of the defendant No.1 it appears to me that the plaintiff has stated in his averment in para-11 of the plaint of this suit that the defendant No.2 i.e. the Purodha Pramukha of Ananda Marga is of unsound mind and he has been suffering from Dementia and he is unable to discharge his day to day official work, even he unable to perform his day to day duty without, the help or the others and he is neither physically nor mentally fit and he is unable to protect the interest as well as the unity of the entire Ananda Margi Organisation. These allegations levelled by the plaintiff has also been denied by the plaintiff has also been denied by the defendant No.1 in their Written Show cause at Para-8 filed against the temporary injunction petition of the plaintiff Under Order 39 Rules 1 and 2 read with section 151 CPC. Apart from that this is one of the major issues to adjudge as to whether the defendant No.2 i.e. the Purodha Pramukha of Ananda Marga is of unsound mind or not or whether he has been suffering from any physical infirmity or not as because the defendant No.1 has been issuing several suspension letters, show cause to many Purodhas.

Be that as it may, it is the case of the plaintiff that the defendant No.1 is issuing suspension letters on behalf of the defendant No.2 and the defendant No.2 is incapable of protecting the interest and unity of the entire organisation due to his physical and mental infirmity and unsoundness of mind. Since this is one of the

main issues of this suit, as such, this Court has ample jurisdiction to adjudge the defendant No.2 of this suit as to whether he is a person of unsound mind or not and whether he is suffering from infirmity or not and whether he has the capability or capacity to protect the interest or the unity of the entire Ananda Marga Organisation or not as because it is for the non-appearance of the defendant No.2 before this Court the numbers of the proceedings and the suits are pending in different Courts of Law. The defendant No.1 is issuing so many suspension letters and the show-cause against the Purodhas and Margis of the Organisation and seeking explanation from many Purodhas and Margis of the Organisation in the name of the defendant No.2. So, to my understanding, personal appearance of the defendant No.2 before this Court is very much required to adjudge as to whether he is a person of unsound mind or not or whether he is suffering from physical and mental infirmity or not."

18. Based, *inter alia*, on the observations as quoted above, the learned Court below proceeded to pass the order impugned.

19. It appears that while passing the order impugned, the learned Court below completely lost sight of an observation of the Hon'ble Supreme Court in Sharda's case (*supra*). It has been observed by the Hon'ble Supreme Court, taking into consideration the provision of Order XXXII Rule 15 of the Code of Civil Procedure, that the prime concern of the Court is to find out as to whether a person who is said to be mentally ill could defend himself properly or not (*emphasis supplied*). It is even more glaringly evident that the learned Court below did not even remotely consider the purport and scope of the provision of Order XXXII Rule 15 of the Code of Civil Procedure, which, on a plain reading, as observed hereinbefore, clearly is for the purpose of ensuring that the Court provides adequate protection of a mentally infirm person's interest, when suing or being sued. The fact that the learned Court below directed the defendant No.2 to appear in person for holding an enquiry as to whether he has been suffering from any "physical" and mental infirmity, makes it all the more clear that it has not been able to grasp the essence of the provision of law, which has nothing to do with "physical" infirmity.

20. From the observations made by the learned Court below, quoted earlier, it appears that the last thing in the mind of the learned Judge was to protect the interest of a person who was mentally infirm. The purpose of causing an enquiry, as envisaged under the provision of Order XXXII Rule 15 of the Code of Civil Procedure, in my view, cannot be for a purpose other than to protect the interest of a person, who, for some reason, is mentally incapable to carry on a litigation. The direction by the learned Court below upon the defendant No.2 who is said to be aged about ninety years to appear in person before the learned Judge, for the purpose of holding an enquiry as to whether he had been suffering from any "physical" and mental infirmity is, therefore, against the very essence of the provision of Order XXXII Rule 15 of the Code of Civil Procedure, 1908.

21. A fact that also should not be lost sight of the instant case is that it was the plaintiff who approached the learned Court below, against the defendant No.2, invoking the provision of Order XXXII Rule 15 of the Code of Civil Procedure. It is not understandable as to how the plaintiff sought for protection of the interest of the defendant No.2 by filing the application before the Court, invoking the provision of Order XXXII Rule 15 of the Code of Civil Procedure, while all along making allegations against him. If there was at all any necessity of protecting the interest of the defendant No.2 of being sued against, for reasons of him being mentally infirm, surely the learned Court below ought to have enquired from the plaintiff as to why he (the plaintiff) was seeking to invoke the Court's jurisdiction under Order XXXII Rule 15 of the Code of Civil Procedure, against the interest of defendant No.2, which is clearly evident from the allegations made by the plaintiff, before the learned Court below. The reason, in my view, in the light of the above discussion, was anything but for the purpose for which Order XXXII Rule 15 of the CPC is in the statute-book.

22. For all the aforesaid reasons, I am of the opinion that the plaintiff's interlocutory application, based on which the order impugned was passed, was not maintainable in law, in the facts and circumstances of the instant case. The impugned order passed by the learned Court below is therefore liable to be set aside and is hereby set aside.

23. The instant revisional application is thus allowed with costs assessed at 300 G.Ms.

Urgent xerox certified copy of this order, if applied for, be given to the parties.