

Order-32 Suits by or against minors and persons of unsound mind

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1. Minor to sue by next friend :-

Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. Where suit is instituted without next friend, plaint to be taken off the file :-

(1) Where a suit is instituted by or on behalf of a minor without a

next friend, the defendant may apply to have the plaint taken off the file with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

2A. Security to be furnished by next friend when so ordered

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(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.]

1. Ins. by Act 104 of 1976, Sec. 79 (w.e.f. 1st February, 1977).

3. Guardian for the suit to be appointed by Court for minor defendant :-

(1) Where the defendant is a minor, the Court on being satisfied of the fact of his minority shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matter in controversy in this suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice ¹[* * *] to any guardian of the minor appointed or declared by an authority competent in that behalf, or where

there is no such guardian, ²[upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or where there is ³[no father, mother or other natural guardian] to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

⁴[(4-A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.]

⁵ [(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceeding in any appellate or revisional Court and any proceedings in execution of a decree.]

1. The words "to the minor and" omitted by C.P.C. (Amendment) Act 104 of 1976, Sec. 79 (w.e.f. 1st February, 1977).

2. Subs. by C.P.C. (Amendment) Act 104 of 1976., for the words "upon notice the father or other natural guardian" (w.e.f. 1st February, 1977).

3. Subs. by C.P.C. (Amendment) Act 104 of 1976., for the words "no father or natural guardian".

4. Ins. by Act 104 of 1976. Sec. 79 (w.e.f. 1st February, 1977).

5. Ins. by Act 16 of 1937, Sec. 2.

3A. Decree against minor not to be set aside unless prejudice has been caused to his interests :-

(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian of the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interest of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.]

4. Who may act as next friend or be appointed guardian for the suit :-

(1) Any person who is of sound mind and has attained majority may act as next friend of a

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent ¹[in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian 'shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested ¹ [or out of the property of the minor] and may give directions for the repayment or allowance of such costs as justice and the circumstance of the case may require.

1. Ins. by Act 104 of 1976, Sec. 79 (w.e.f. 1st February, 1977).

5. Representation of minor by next friend or guardian for the suit :-

(1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. Receipt by next friend or guardian for the suit of property under decree for minor :-

(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either-

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability, known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application: ¹ [Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other moveable property under a decree or order, where such next friend or guardian-

(a) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(b) is the parent of the minor.]

1. Added by Act 104 of 1976, Sec. 79 (w.e.f. 1st February, 1977).

7. Agreement or compromise by next friend or guardian for the suit :-

(1) No next friend or guardian for the suit shall, without the leave of the Court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

¹ [(1-A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor: Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise is for the benefit of the minor.]

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

1. Ins. by Act 104 of 1976, Sec. 79 (w.e.f. 1st February, 1977).

8. Retirement of next friend :-

(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the cost already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

9. Removal of next friend :-

(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within ¹ [India], or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend, unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

1. Subs. by Act 2 of 1951, Sec. 3 for 'the States'.

10. Stay of proceedings on removal etc., of next friend :-

(1) On the retirement, removal or death, of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply, to the

Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. Retirement, removal or death of guardian for the suit :-

(1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

12. Course to be followed by minor plaintiff or applicant on attaining majority :-

(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus: "A.B., late a minor, by C.D., his next friend, but now having attained majority."

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite-party or which may have been paid by his next friend.

(5) Any application under this rule may be made ex parte, but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. Where minor co-plaintiff attaining majority desires to repudiate suit :-

(1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The cost of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such person as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. Unreasonable or. improper suit :-

A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. Rules 1 to 14 (except rule 2-A) to apply to persons of unsound mind :-

Rules 1 to 14 (except rule 2-A) 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.

16. Savings :-

(1) Nothing contained in this Order shall apply to the Ruler of a foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.

(2) Nothing contained in this Order shall be construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.]