

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 6036 of 2016 : Mst. Aisha Nisar & Another vs.  
District & Sessions Judge, Karachi  
Central & Another

For the Petitioners : Mr. Afaq Yousuf, Advocate

For the Respondents : Nemo for respondents

Date of Hearing : 21.10.2019

Date of Announcement : 21.10.2019

## JUDGMENT

**Agha Faisal, J:** Present petition was filed assailing the order dated 01.03.2016 (“Impugned Order”) rendered by the Court of the learned II<sup>nd</sup> Additional District Judge, Central Karachi in SMA Nil of 2016, wherein the petition was dismissed on account of maintainability.

2. Briefly stated, the petitioners, stated to be minors, preferred a petition for grant of Letters of Administration and Succession Certificate in respect of the estate of their deceased mother. The verification of the aforesaid petition was undertaken by a person representing herself to be a maternal aunt of the petitioners. The Court considered the institution of the petition, by a person other than a guardian, as discrepant and dismissed the same while maintaining that the same may be filed by a third party provided that a guardianship certificate for managing the person and property of the minors has been obtained from the court of competent jurisdiction. It is considered appropriate to reproduce the operative constituent of the Impugned Order herein below:

“From its perusal it appears that one lady Mst. Munawar Sultana is claiming to be real maternal aunt of the petitioners who are minor but she is not their natural guardian therefore the said lady was required to obtain Guardianship Certificate under Section 7 of Guardians and Wards Act for managing the person and property of the minors and without appointing any guardian on behalf of the minors by competent court the said lady cannot claim herself to be guardian of the minors of deceased Mst. Raees Fatima Nisar and this petition filed by her is not maintainable till her appointment as guardian by competent court of law.

Under the above discussed reasons I am of the humble view that the present SMA is not maintainable and is hereby dismissed.”

3. Mr. Afaq Yousuf, Advocate appeared on behalf of the petitioners and submitted that pursuant to Order XXXII Rule 1 CPC a minor was capable of being represented by another person. It was argued that in view of the relevant provisions of the CPC, the Impugned Order was rendered in erroneous interpretation of the law, hence, may be set aside.

4. We have heard the arguments of the learned counsel for the petitioners at length and at the very onset queried as to whether a Guardianship Certificate had been obtained in respect of the minors, subsequent to the rendering of the Impugned Order. Learned counsel for the petitioner submitted that no Guardianship Certificate had ever been applied for and obtained and there is no benefit in applying for the same now as one of the minors has attained the age of majority and the other shall become a major within one year. No reason was advocated before us as to why the petition for succession to the estate of the deceased has since not filed by the

legal heir who had attained the age of majority and on the contrary the learned counsel insisted on pressing the present petition.

5. We have given careful consideration to the provisions of the Guardian and Ward Act, 1819 ("Act") and it is the primary objective thereof to safeguard the interests of the minors. Section 7 of the Act contains the provision for the appointment of a guardian to look after the person and property of a minor, where the court is satisfied that exercise of the said power is merited in the welfare of the said minor. Section 8 of the said Act, *inter alia*, recognizes the eligibility of a relative of a minor to apply for guardianship, in the manner scribed in the previous section. Chapter III of the Act is comprised of detailed sanctions governing the rights, duties and obligations of a person appointed as guardian. The object of the foregoing is to ensure and afford maximum protection to the interests of minor, during the period wherein the said person does not enjoy the legal capacity to undertake the same duties himself.

6. The grant of letters of administration and succession certificates imposes onerous obligations and duties upon the person who is conferred with the said responsibility. It is inconceivable that a minor would be burdened with such a role. It is further beyond the pale of the law that the responsibility be bestowed upon a minor yet the role, so bestowed, be exercised by a third party, claiming to exercise the right as a next friend.

The entire thrust of the learned counsel for the petitioners was that the minors were entitled to the grant of a letter of administration / succession certificate, yet their role would be performed by a third

party claiming to be their next friend. Learned counsel, however, was unable to substantiate this contention with any provision of the law, hence, the said argument cannot be sustained.

7. In any event, the Impugned Order does not bar the petitioners from succeeding to the benefit of the estate of the deceased and on the contrary order devises the correct course to pursue in order to safeguard the best interest of the petitioners themselves.

8. We have considered the Impugned Order and find that the same appears to have been rendered in pursuance of the law. The learned counsel for the petitioners has been unable to identify any infirmity in respect thereof, hence, the present petition alongwith pending application, is hereby dismissed with no order to costs.

J U D G E

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*Farooq PS/\**