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QUESTION:

Write an exhaustive note on the procedure laid down for filing of suits by or against minors?

ANSWER:

SUIT BY MINOR:

A minor litigant is considered to be under the protection of the court and the court has to watch over the interests of such minors and ensure that the minor is represented by a fit and proper person. **1988 SCMR 552.** The reason is that a minor cannot bind himself in contract.

A suit on behalf of a minor plaintiff is brought in the minor's name by a next friend. **PLD 1986 Kar. 489.** A person who looks after the interests of minor defendant is called a guardian ad litem or guardian for the suit. **1988 CLC 768.** The person who initiates and institutes a suit on behalf of a minor automatically becomes the next friend and permission of the court is not necessary in order to act as a next friend. He will continue as such for all purposes including appeal till removed. Where a suit is filed by a minor without a next friend, the court should allow time for the suit to be reconstituted in a proper manner, but if such a suit is allowed to continue without any objection on the part of the defendant, the decree will be valid.

SUIT WITHOUT NEXT FRIEND:

Where a suit is instituted by a minor without a next friend, the court can on the application of the defendant or suo motu take the suit off the file of the

court. 1991 MLD 1523. The proceedings are to be suspended and the court should allow an opportunity to remedy the defect. 1994 CLC 681. The fact of minority may either be apparent from the plaint or the court can hold an inquiry for the purposes of determining the fact whether the plaintiff is a minor or not. When only one of the several plaintiffs is a minor, the proceedings will not be stayed. Where it is apparent from the plaint, the plaint is taken off the file. In the later case according to one practice, the suit is to be dismissed, whilst according to another, the plaint is only taken off the file, and time allowed to enable the minor plaintiff to be represented by a next friend. A suit instituted by a minor without a next friend is not a nullity. Where the defendant being aware of this fact does not object, the decree will be binding upon the defendant, and where the next friend is appointed in consequence of the objection by the defendant, the defendant cannot challenge the original institution.

GUARDIAN AD LITEM:

The purpose of this rule is to ensure due and proper representation on behalf of a minor defendant through a guardian at litem. PLD 1986 Lah. 373. It is the duty of the court to appoint a guardian at litem as soon as it becomes aware of the defendant's minority, and thereafter it cannot proceed ex-parte against a minor defendant.

It is duty of the plaintiff to apply for the appointment of a minor defendant's guardian ad-litem. The guardian ad litem of a minor defendant is constituted by order of the court whilst a next friend of a minor plaintiff constitutes himself by merely filing the suit on behalf of the minor. The appointment of a guardian ad litem ensures for the whole litigation including appeal and execution. Where the factum of minority is disputed, the court should determine it. A minor defendant is not considered to be a party to the suit till such time as he is represented by a guardian ad litem, and as such a decree obtained against a minor without a guardian ad litem, can be declared null and void, but where no prejudice has resulted, it may be sustained. The minor can ignore the decree or can file a suit to set aside the decree. In such

cases the suit will be deemed to be pending and an order to set aside the decree is not required. Where there are a number of defendants jointly interested and any one of them is a minor impleaded without a guardian ad litem, the entire proceedings will be of no avail.

EFFECT OF IRREGULARITY:

Where a minor is not represented by a duly appointed guardian, the executing court cannot question the decree on the ground that the defendant was a minor and was not sued through a guardian. Even the minor cannot object against the decree on this ground before the executing court, as a minor sued without a guardian cannot be said to be a party to the suit, and as such cannot take any proceedings which a party is entitled to take. He can file a suit on the same matter which is not barred by res judicata. Where an ex-parte decree is passed against a minor without a guardian ad litem, the minor not being a party cannot apply. But the decree and the sale of property pursuant to such decree is a nullity. A minor can file a suit to set aside such a decree and such a suit is not barred.

REPRESENTATION THROUGH GUARDIAN AS LITEM:

Where the minor is represented by a duly appointed guardian, the minor is a party to the suit, and the decree in such suit is binding upon the minor and operates as res judicata. A minor can get the decree set aside by means of a suit, if the guardian has been guilty of fraud or collusion, or has been negligent and the minor's interests have been prejudiced. Such a decree is not void but is voidable. The same principle applies to appeals and execution proceedings.

CAPACITY OF GUARDIAN AD LITEM:

A guardian ad litem is not a party to the suit. It is mandatory for the court to appoint the guardian ad litem. The list to be furnished under the Lahore amendment need not be first exhausted, and the filing thereof is directory and not mandatory. As such a suit is validly instituted against a

minor even if at the time of institution there is no guardian ad litem and limitation will be saved by such institution.

The appointment of a guardian ad litem is made by the court either where the plaint reveals the defendant's minority or defendant pleads minority. Where minority is disputed, the court is to ascertain it. It is for the court to appoint a proper person as a guardian ad litem. A defect in the procedure followed in appointing a guardian does not vitiate the decree, unless the minor is prejudiced as a result thereof.

DUTIES OF GUARDIAN:

As a trustee of the interests of minor, the guardian is to act in the best interest of the minor and raise all defence, and where the guardian's gross negligence adversely affects a right of the minor, the decree may be avoided. However, mere acts of omission on the part of the guardian such as failure to appear in defence when in fact there is no defence available, will not vitiate the proceedings. But in an appeal the guardian of a minor respondent must defend the decree.

REMOVAL OF NEXT FRIEND:

The court may remove the guardian ad litem or next friend in its discretion but it will not act suo motu. **AIR 1954 Bombay 214**. Where the next friend does not act diligently the case may be adjourned to enable some one to apply for his removal. If the next friend defaults in appearance, the court can dismiss the suit in default, but in accordance with one view it should adjourn and stay the proceedings where the interests of the guardian are adverse to that of the minor.
