

CHAPTER V

MINORS AND PERSONS OF UNSOUND MIND

63. Next friend of minor to make affidavit. Order of appointment unnecessary :-

When a suit is brought on behalf of a minor, the next friend shall make an affidavit, to be presented with the plaint in the suit, that he has no interest directly or indirectly adverse to that of the minor, and that he is otherwise a fit and proper person to act as such next friend. The date of birth of the minor, if known, or otherwise his age, shall also be stated. No order appointing the next friend by whom the suit is to be instituted will be necessary.

64. Procedure by petition when defendant is a minor :- When a plaintiff knows that a defendant is a minor, he shall, on the presentation of the plaint, present a petition for the appointment of a guardian for the suit for such defendant. Such Petition shall be in Form No. 6.

65. Person eligible to be *guardian ad-litem* :- The person to be appointed guardian for the suit, if he has no interest directly or indirectly adverse to that of minor and is otherwise a fit and proper person to be appointed guardian for the suit, will ordinarily be (a) the guardian of the minor appointed or declared by an authority competent in that behalf, or (b) the testamentary guardian, or (c) the natural guardian, or (d) the person under whose care the minor is, and the plaintiff shall, if possible, obtain the consent in writing of one of such persons, in order of priority referred to above, to his appointment as such guardian.

66. Procedure when plaintiff unable to obtain consent of persons eligible :- If the plaintiff is unable to obtain the consent of any of the persons mentioned in the last preceding rule, he shall state the reasons of his inability and propose some other fit and proper person for being appointed guardian for the suit; a notice will then issue to the minor if the minor is above 14 years of age and to the persons mentioned in the last preceding rule informing them that on a day to be therein named, the Prothonotary and Senior Master will, if no cause be shown to the contrary, proceed to appoint the person proposed by the plaintiff, or some other fit and proper person, to be such guardian as aforesaid. (Form No.7).

67. Service of summons on *guardian-ad-litem* :- (1) On such appointment being made, the summons and other processes or Notices in the suit shall be served on such *guardian-ad-litem* on behalf of the minor unless otherwise ordered.

(2) Where no *guardian-ad-litem* has been appointed or for any other reasons the Court orders service on a minor personally and such minor is unable to acknowledge the same, the service shall be effected by serving any person in whose charge minor is or with whom he habitually resides.

In case there is no such person, the service shall be effected by affixing a copy of the writ or other process with a translation thereof on the outer door of the house in which the minor ordinarily resides.

68. Application of Rules 63 to 67 to persons of unsound mind:- The provisions contained in Rules 63 to 67 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 inquiry by reason of unsoundness of mind or mental infirmity to be incapable of protecting their interest when suing or being sued.

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