

## CIVIL REVISION.

*Before Henderson and Khundkar JJ.*

SRIPAT SINGH DUGAR

1939

*Jm*§e 21.

**MOHINI SUNDARI.\***

**Guardianship**—*Who can apply for the removal of a guardian—Guardians and Wards Act (VIII of 1890), ss. 5, 39.*

The first cousin, once removed, of the minor, who is thus within the terms of a. 8(b) of the Guardians and Wards Act, is a “person interested ” within the meaning of s. 39 of the Act and can apply for the removal of the guardian. The fact that he is at enmity with the guardian does not affect the question.

Civil Revision.

**The material facts of the case and the arguments in the Rule appear from the judgment.**

*Panchanan Ghose and Pare snath Mukherjee (Jr.)* for the petitioner.

*S. M. Bose, Advocate-General of India, and Pramath Nath Mitra* for the opposite party.

**HENDERSON J.** The short point raised for determination in this Rule is the interpretation of the words “any person interested” in s. 39 of the Guardians and Wards Act and it does not appear that it has ever been raised before. The opposite party was appointed guardian of the properties of two wealthy minors. The petitioner filed an application for her removal under s. 39 of the Act. The District Judge, without considering the application on its merits, dismissed it as incompetent. In view of a report submitted by an Auditor of the Accounts, it appeared that all was not well with the administration of the estate and the learned Judge proposed to consider the matter on his own motion. The petitioner then obtained this Rule.

\*Civil Revision Cases, Nos. 1403 and 1465 of 1938, against the order of District Judge of Murshidabad, dated June 30, 1938.

The term "any person interested"<sup>55</sup> is obviously very wide. Possibly it might be easier to say, whom it excludes rather than whom it includes. We do not propose, and in fact the learned Advocate-General of India did not ask us, to attempt to formulate any definition or to give any comprehensive explanation of the term. We shall merely consider whether on the facts of the present case the petitioner has brought himself within the section.

The learned District Judge found the petitioner to be at enmity with the opposite party and on that finding alone he came to the conclusion that the petitioner is not a person "interested"<sup>55</sup>. In other words he has come to a finding as to the motive actuating the petitioner. He did not consider the real point at issue.

In our opinion, the matter cannot be decided merely with reference to something subjective in the mind of the applicant but some objective meaning must be given to the term.

The petitioner is the first cousin, once removed, of the minors. He is thus within the terms of s. 8(6) of the Act and thereby entitled to make an application for the appointment of a guardian. Indeed a special notice was issued on him by the learned Judge himself in connection with the actual appointment. In our opinion, the fact that he comes within the term of s. 8 is quite enough to make him personally interested within the meaning of s. 39 of the Act.

We, accordingly, make the Rule absolute. We set aside the order of the District Judge and direct him to hear and determine the application in accordance with law.

We make no order as to costs in this Rule.

No order is necessary on the other Rule (1465 of 1938).

Khundkar J. I agree.

*Buie absolute.*

A. C. K. C.

1939

*Sripat Singh  
Dugar  
v.  
Mohini Sundari.*

*Henderson J.*