APPELLATE CIVIL.

Before Mr. Justice Sundaram Chetti and
Mr. Justice Pakenham Walsh.

1933, October 5.

GNANAMBAL AMMAL (FIRST RESPONDENT), APPELLANT,

v.

S. VADIVELU PILLAI AND TWO OTHERS (PETITIONER AND RESPONDENTS 2 AND 3), RESPONDENTS.*

Guardians and Wards Act (VIII of 1890), sec. 43 (1)—Order directing guardian to advance loan—Application under section 43 (1) for—Locus standi *to present—Debtor if has—Application by debtor treated as one under sec. 43 (1) and question decided under that section—Appeal from order by aggrieved party—Competency of—Question of debtor's competency to apply under sec. 43 (1) if open in appeal.*

A debtor, who has no concern with a minor, either as a relation or as one occupying a fiduciary position, and who desires to get a loan from out of the funds of the minor, has no *locus standi* to apply under section 43 (1) of the Guardians and Wards Act for an order directing the guardian to advance the loan.

Where the Court, without dismissing the application of the debtor *in limine*, purports to decide the question under section 43 (1) treating it as one under that section, the party against whom the order is passed is entitled to appeal, and also raise the question of the competency of the petitioner to apply under that section.

APPEAL against the order of the District Court of South Arcot, dated 30th August 1933 in pursuance of its order dated 11th August 1933 and made in Interlocutory Application No. 248 of 1933 in Original Petition No. 333 of 1925.

* Appeal against Order No. 325 of 1933 and Civil Revision Petition No. 1347 of 1933.

T. M. Krishnaswami Ayyar for appellant.

S. Muthiah Mudaliar and *N. Somasundaram* for first respondent.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by SUNDARAM CHETTI J.—This civil miscellaneous appeal has been preferred by Gnanambal Ammal, the mother of the minor Subbaraya Chetty, who was also appointed as the guardian of the person of the minor. By way of caution, a civil revision petition is also filed. The order appealed against was passed by the District Judge of South Arcot on a petition filed by S. Vadivelu Pillai (first respondent) praying that a loan of Rs. 30,000 may be ordered to be given out of the minor's funds on a first mortgage of immovable properties. The Court issued notices to the personal guardian, the outstandings guardian and the immovable properties guardian of the minor, in respect of that application. All the guardians stoutly opposed the petition on the ground that the proposed investment is neither safe nor calculated to promote the best interests of the minor in view of the present economic depression in the country. The learned District Judge made an investigation and came to the conclusion that the apprehension of the guardians was not well founded, and ordered the grant of the loan by according his sanction reserving the question of settlement of the details regarding the terms of the mortgage to another date. Against this order the present appeal and the revision petition have been filed by the personal guardian.

While the learned Advocate for the appellant wanted to urge a technical objection that a petition

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of this kind by a stranger desiring to secure a loan of the minor's money is not maintainable under section 43 of the Guardians and Wards Act, he was met with a counter-objection that this appeal itself is incompetent. Both sides have addressed elaborate arguments on these points, but, in our opinion, the real question arising in this case is in a narrow compass, and therefore we confine our remarks to it. The petition in question was filed by Vadivelu Pillai under rule 21 of the Rules framed under the Act. When the objection that he had no *locus standi* was raised, he stated in his reply affidavit that his application was under sections 32 and 43 of the Act. There is no doubt that the Court purported to act under section 43 on this application, for it directed the issue of notices to all the guardians of the minor as required by sub-clause 3 of that section, with a view to hear their objections, before passing an order on the petition. Moreover, the order passed on the petition is substantially one coming within the purview of sub-clause 1 of section 43. An order sanctioning the loan and directing the issue of it is doubtless one to be carried out by the act of the outstandings guardian. In continuation of the said order passed on 30th August 1933, an order was passed on 2nd September 1933 directing that guardian to get the document drawn up. It means that he must receive the mortgage bond after its execution and registration and draw the sum and pay the consideration for the mortgage. That being so, the order is one regulating the conduct or proceedings of the guardian appointed by the Court, as contemplated in section 43, against which an appeal lies to the High Court

under section 47, clause 1, of the Act. It is argued by Mr. Krishnaswamy Ayyar for the appellant that it is open to him in this appeal to show that the petitioner had no *locus standi* to make an application under section 43, clause 1, and the lower Court was wrong in entertaining it and proceeding with its investigation, without dismissing it *in limine*. Though the application was not maintainable, the Court, however, purported to decide the question under section 43, clause 1, treating it as one under that section, and therefore the party against whom the order was passed would be entitled to appeal, and also raise the question of the competency of the petitioner to apply under that section; vide *Latchmanan Chetty* v. *Ramanathan Chetty*(1).

According to section 43, clause 1, of the Act, the application has to be made by any person interested. This evidently means a person interested in the minor. But the petitioner can in no sense be deemed to be one interested in the minor. He is a stranger having no concern with the minor, either as a relation or as one occupying a fiduciary position. He has therefore no *locus standi* to file an application under that section. If every debtor who wants to get a loan from out of the funds of the ward is held to be competent to apply to the Court for an order directing the guardian to advance the loan, he should also have the right to appeal against the order, if it turns out to be adverse to him. The door will be open to persons in need of loans to file applications to the Court for sanctioning them. When a debtor cannot claim the grant of a loan as a matter of right, it

(1) (1904) I.L.R. 28 Mad. 127.

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stands to reason that he should have no remedy when the loan is denied to him. It seems to us that a petition of this kind by a debtor (in his interests) would not lie under section 43, clause 1.

An attempt was made by the learned Advocate for first respondent to get over this difficulty by suggesting that the application in question may be treated merely as information furnished to the Court, so that it may of its own motion make the necessary order under section 43 (1). But the fact is otherwise. The first respondent was not content with merely supplying information, but made a specific prayer for an order in his favour. Nor did the Court purport to act *suo motu* in passing the order appealed against. This suggestion seems to be futile. Another ingenious argument was put forward to give a new turn to the whole proceeding. It is now urged that the order of the District Judge should be taken to be an administrative order against which neither an appeal nor a revision petition lies. This suggestion is bereft of any foundation. When the petitioner himself stated that his application was under sections 32 and 43 of the Act, and when the Court evidently purported to deal with it as such, how can it now be urged that the order was merely an administrative one? In the face of his own averment in his affidavit, the petitioner is estopped from raising such a contention now.

We are of opinion that the lower Court should have dismissed this petition on the ground that the petitioner had no *locus standi* to present it under the aforesaid section.

Even on the merits, we think that the learned District Judge did not give due weight to the

apprehension expressed by all the three guardians of the minor, which, in view of the depression in the economic conditions of the country, cannot be slighted as chimerical.

[His Lordship then considered the objections to the sanction of the mortgage loan and concluded as follows :—]

That being so, the sanction of this mortgage loan is one which we do not think fit to uphold.

In the result, the appeal is allowed, and the application of the first respondent is dismissed. He will pay the costs of the appellant in this Court.

No orders are necessary on the civil revision petition.

The typing charges will be included in costs.

A.S.V.