

can, after the proceedings have been completed, turn round and for the first time raise an objection. This Court has already held that an appeal lies against an order refusing to file an award under this Act. There is nothing in this objection to the validity of the award, and it will be the duty of the court below to file it unless it is satisfied that there is something in the other objections which the objector still desires to raise. The appeal must be allowed and the matter remitted to the lower appellate court to restore it to its pending file and to dispose of the remaining objections according to law. The appellant must have his costs of the appeal and the amount certified therein. Notice was issued by the appellant for some reason or another to the umpire and he is represented by counsel here. The respondent no. 2 is therefore entitled as against the appellant to such costs in this appeal as the law allows.

*Appeal allowed and cause remanded.*

*Before Mr. Justice Walsh and Mr. Justice Ryves.*  
**MURLIDHAR PANDE (APPLICANT) v. LACHHMI PANDE**  
 AND OTHERS (OPPOSITE PARTIES)\*

**Act No. IV of 1912 (Indian Lunacy Act)—Procedure—Inquisition as to person alleged to be a lunatic—Court not competent to delegate its judicial functions to an arbitrator or commissioner—Expert evidence.**

It is not competent to a Judge who has to conduct an inquisition under the Indian Lunacy Act, 1912, into the state of mind of an alleged lunatic to abrogate his own judicial functions and appoint some person by way of an arbitrator or commissioner to make a report on the state of mind of the alleged lunatic. If a Judge, in these or similar circumstances, finds it necessary to have expert opinions to assist him, it is his duty to call such persons as may be able to give the evidence needed and examine them upon oath.

This was an appeal under section 83 of the Indian Lunacy Act, 1912, from an order of the District Judge of Ghazipur appointing a manager of the estate of a person who had been found to be of unsound mind so as to be incapable of managing his affairs.

The facts of the case sufficiently appear from the judgment of RYVES, J.

Mr. M. L. Agarwala and Pandit Uma Shankar Bajpai, for the appellant.

\* First Appeal No. 111 of 1920 from an order of Baij Nath Das, District Judge of Ghazipur, dated the 15th of June, 1920.

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Mr. *Nihal Chand*, for the respondents.

RYVES, J. :—This appeal arises out of proceedings under the Lunacy Act No. IV of 1912. They began by an application filed in the court of the District Judge of Ghazipur by one Murlidhar Pande on the 31st of March, 1920. Murlidhar Pande alleged that he was a relation of Lachhmi Pande and that Lachhmi Pande was of unsound mind within the meaning of the Act and incapable of managing his property, and in the interests of the minors asked to be appointed guardian of his estate. This application was immediately followed by at least two more applications by other relations of Lachhmi Pande. Mata Dayal Pande was one. The procedure adopted by the then Judge of Ghazipur was not according to law. On these applicants coming before him he examined them and found that they were all agreed that Lachhmi Pande was a lunatic, and they suggested that Mahadeo Prasad, who seems to have been a person of some position, was a suitable person to be appointed the guardian of the lunatic and his property. He, however, refused to accept the appointment, but said that he was willing to inquire into the state of the mind of Lachhmi Pande and suggest what would be the best course to adopt. The court appears to have appointed him as a sort of arbitrator and directed him to furnish his report to the court, which is described by the learned Judge as an award in which he found that Lachhmi Pande was a lunatic and suggested that two persons, namely Ramdhani and Murli, who are both near relations of Lachhmi Pande, might be appointed guardians, and on the 4th of June passed the following order:—“Read award of Mahadeo Pande appointing Ramdhani and Murli as guardians. Objections by Shyama and Mata Dayal to the effect that Murlidhar has some secret adverse interest. None object to Ramdhani’s appointment. I, therefore, provisionally appoint Ramdhani as guardian of the lunatic for the present for adjudication of Lachhmi Pande’s lunacy. I direct Ramdhani to produce the lunatic in court to satisfy me that he (Lachhmi) is really a lunatic. I invite attention to orders, dated the 14th of April, 1920, and the 14th of May, 1920, which remain yet uncomplished with. I fix the 15th of June, 1920, for evidence and production of Lachhmi Pande.” By the 15th of June the learned District Judge had been transferred

and the matter came up before his successor who contented himself with questioning Lachhmi Pande who had appeared before him, and without taking any other evidence came to a finding which is not very happily worded. He says:—"It may be that this man is of weak intellect. It is difficult to say that he is a lunatic." Later on he goes on to say:—"As all the applicants are agreed that Lachhmi Pande is a lunatic and as I also think that although not quite a lunatic, he is incapable of looking after his own interests owing to weak intellect, I declare him to be a lunatic." We think that what the learned District Judge meant to find was that Lachhmi Pande came within the description in section 65 (2) of the Act, namely, that Lachhmi Pande was of unsound mind so as to be incapable of managing his affairs, but that he was capable of managing himself and was not dangerous to himself or to others. That this was his opinion, we think, is proved by the fact that he ultimately appointed one Mata Dayal guardian of Lachhmi Pande's property only. He chose Mata Dayal because of the marked preference which Lachhmi Pande showed to him. From that order an appeal has been filed under section 83 of the Act to this Court by Murlidhar Pande who was one of the disappointed applicants. He is not so nearly related to Lachhmi Pande as Mata Dayal, and there really is no reason why he should be preferred to Mata Dayal for the post of guardian of the property. We have ourselves examined Lachhmi Pande and are satisfied that he does come within the description given in section 65, clause (2), of the Act, and we, therefore, confirm the appointment and dismiss the appeal with costs. Before disposing of this matter, however, we would call the attention of the learned District Judge to section 67(2) and to section 71(2) of the Act, and direct him under these sections to take proper action.

WALSH, J. :—I entirely agree and have nothing to add except with regard to the previous proceedings, which have been mentioned to us as part of the history of the case, taken by the predecessor of the Judge whose order is under appeal. No judge has any right, or indeed any jurisdiction, to delegate his function to a third person except, of course, under the provisions of the law of arbitration in matters to which these provisions are

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appropriate. A Judge no doubt in many matters which come before him in connection with the duty of disposing of suits, may desire to inform his own mind with expert assistance, or with the opinion of somebody whom he considers better fitted than himself to form a definite view upon a particular issue. For example, a Judge may appoint a commissioner in a civil suit to report about the condition or the value of the property or the nature of crops or the measurement of land, but it is obvious that in such a case the commissioner or person appointed to assist or advise a Judge is no more than a witness and the Judge must retain the judicial function in his own person. If, for example, in this case, the Judge wanted to adopt the opinion of Mahadeo Pande, the proper course was for him to call that gentleman into the box and to examine him on oath and ascertain the reasons for the view which he entertained, and if he saw fit to adopt the view of that gentleman, he would be acting within his jurisdiction and with a right discretion, but he would be doing so on sworn testimony which would form part of the record. In such a matter as this to talk about arbitration and award is to use language which has no meaning.

Reference might also be made to the case of *Muhammad Yakub v. Nazir Ahmad*(1). In that case the Court endeavoured to lay down suggestions to guide a Judge who was called upon by an application brought before him to decide whether an inquisition ought to be held and if so, the proceedings which should be taken.

It is only right to add that the report of this decision was not published until after the date of the learned District Judge's order,

*Appeal dismissed.*

(1) (1920) I. L. R. 42 All., 504.