

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8742 OF 2014

Ganesh s/o Laxman Shirsul ..PETITIONER

VERSUS

Shankar s/o Vankayya Shirsul
and ors. ..RESPONDENTS

Mr S.Y. Mahajan, Advocate for petitioner;
Mrs C.S. Deshmukh, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 30th March, 2015

ORAL ORDER :

By the present petition, the petitioner/original defendant no.2, seeks to challenge order dated 23rd July, 2014, passed by Civil Judge Junior Division, Ahmednagar (presided over by Mr T.M. Nirale, Judicial Magistrate F.C., Court No.9, Ahmednagar), below Exh.74, in Regular Civil Suit No.275 of 2007, whereby prayer under Order XXXII of the Code of Civil Procedure, came to be rejected.

2. Learned Counsel appearing on behalf of the petitioner would urge that in the application Exh.74, the petitioner herein has questioned the

mental status of respondent no.1/original defendant no.1 and in support thereof, he has placed on record the documents in relation to the medical examination of defendant no.1; his diagnosis and medicines administered to him. According to him, defendant no.1 should have been ordered by the Court below to be represented through his next friend and as such draws support from Order XXXII of the Code of Civil Procedure.

3. Learned Counsel would further urge that the learned Trial Court, while rejecting the said application has not taken into account the mental illness and mental condition of defendant no.1, which is reflected in the O.P.D. Card at pages 37, 38, 42, 44, 46 and 48 of the petition. According to him, as such the Trial Court was duty bound to conduct an inquiry in the said matter, having regard to the above referred documentary evidence, so as to judge the mental status of defendant no.1 and to pass appropriate order on the application Exh.74.

4. Mrs Deshmukh, learned Counsel appearing on behalf of respondent no.1, strenuously objects to the claim put-forth by the petitioner, on the ground that the written statement filed by the father does not depict such mental status of defendant no.1. She would urge that the application Exh.74 is not sustainable in view of filing of the written statement. She would further urge that the learned Trial Court has looked into the requirement of Order 32, Rule 15 of the Code of Civil Procedure

and having tested the requirement thereof, rejected the application. According to her, the petition, therefore, deserves to be rejected.

5. The provisions of Order XXXII, Rule 15 of the Code of Civil Procedure contemplate an inquiry by the Court when it is required to consider the mental status of a person, about whom an objection is raised.

6. If we read the contents of the documents referred supra, i.e. the medical record in relation to defendant no.1, it speaks volumes about mental status of defendant no.1. The said consideration by the Trial Court, in the background of requirement of Order 32, Rule 15 of the Code of Civil Procedure, is absent in the impugned order.

7. Having regard to above observations, it will be in the fitness of the things that the order impugned is quashed and the matter is remanded back to the Trial Court for deciding the application afresh, having regard to the documentary evidence cited supra and the scheme of Order 32 of the Code of Civil Procedure. Hence, I proceed to pass following order :-

The order dated 23rd July, 2014, passed by Civil Judge Junior Division, Ahmednagar (presided over by Mr T.M. Nirale, Judicial Magistrate F.C., Court No.9, Ahmednagar), below Exh.74, in Regular Civil Suit No.275 of 2007, is quashed and set aside.

Application Exh.74 stands restored to the file of the said Court with a direction to decide the same afresh, in the light of the scheme of Order XXXII, Rule 15 of the Code of Civil Procedure, upon taking into account the documents which are discussed above and shall take recourse to such other inquiry as it deems fit and proper, in the facts and circumstances of the case.

Writ Petition stands partly allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj