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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

MIS. PETITION NO. 8 OF 2015

Sonia Sudhir Patel & Ors.

...Petitioners

Mr. Chirag Balsara a/w. Mr. H.N. Vakil, Mr. Rushil Mathur
i/b. Mulla & Mulla CBC for the Petitioners

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 1ST OCTOBER, 2015**

PC. :

1. The petition is filed under the provisions of Sections 52, 53 and 54 of the Mental Health Act 1987 for sale of flat No.27 in Shiv Tirth No.1, Co-operative Housing Society Ltd., Bhulabhai Desai Road, Mumbai – 400 026.
2. The petition is in respect of the property and person of a mentally challenged person Sarju Madhu Patel aged 49 years who is the brother of petitioner No.1 and brother-in-law of petitioner No.2. The guardians of the mentally challenged person have been appointed under the order of this Court dated 13th December, 2004 in Mental Health Petition No. 9 of 2004.
3. The father and the first natural and legal guardian of

the mentally challenged person left a will making provisions for him. Under the will the aforesaid property is to belong to him for his life time and thereafter to belong to the petitioner No.1 absolutely. The petitioner No.1 is resident in the US. The mentally challenged person lives in a home for such persons run by the Association of Parents of Mentally Retarded Children known as “ADHAR” institute at Thakurwadi, Village Mulgaon, Asnoli Phata, Off Barvi Dam Road, Badlapur(W), Thane District.

4. The petitioners claim that there is no person residing in the aforesaid flat. The petitioners claim that they cannot maintain the flat since petitioner Nos. 1 and 2 reside out of India. The petitioners also claim that it would not be feasible for them to license the flat to another party since they are Non Resident Indians and apprehend that the said flat would not be easily recoverable and saleable at the time petitioner No.1 obtains it under the bequest made by her father under his will.
5. The petitioners have applied for sale of the aforesaid flat upon certain undertakings offered by the petitioners. The sale would constitute an acceleration of the trust created under the will of the deceased father of the mentally challenged person. In normal circumstances and except when it is made in the interest of the mentally challenged person,

the Court would not allow such acceleration or advancement of the trust.

6. The Court has to first see the extent of the mental retardation of the mentally challenged person, ascertain whether it is a permanent disability or whether it is curable partly or fully or whether the mentally challenged person would require the estate left behind as his life interest during his life.

7. The Court, therefore, appointed the Associate of this Court as the Commissioner to visit Aadhar and ascertain the true position of the mentally challenged person. The Court Commissioner has promptly and diligently undertaken the commission and filed her report. The report shows that he is mentally challenged and requires medication as well as personal care which he would require through out his life. He cannot understand what persons around him talk, he cannot talk and he does not sit at one place for even a few minutes. He does not understand what has transpired around him. He cannot eat on his own. He requires assistance from attendants for his basic requirements. He is, therefore, totally dependent upon others. The Commissioner has reported that after she was introduced to him he greeted her, shook her hand, went away and came after few minutes and repeated the act. It is also reported by the Commissioner that he was admitted to

the institution by his father during his life time on 14th October, 2014. She has produced the copy of the admission form along with her report.

8. It is, therefore, seen that the application for sale would enure for the benefit of both the petitioner No.1 who is the ultimate beneficiary as also the mentally challenged person who may require amounts from time to time for his maintenance, residence and upkeep in Aadhar.
9. A sum of Rs.15,00,000/- is initially payable in Aadhar from which the day-to-day maintenance of the mentally challenged person would be taken care of. The petitioners have not paid the said amount yet. The petitioner No.1 shall have to pay Rs.15 lakhs to Aadhar within 2 weeks from today upon which the petitioners shall be entitled to sell the aforesaid flat No.27 in Shiv Tirth No.1, Co-operative Housing Society Ltd., Bhulabhai Desai Road, Mumbai – 400 026.
10. As per the valuation made by the petitioners the flat is stated to be approximately 1500 sq. ft. = 167.28 sq. mts in area and of the market value of approximately Rs.10.70 crores. The depreciated value is stated to be Rs.6.43 crores. The maintenance and repair bills of the society produced by the petitioners show the building is well maintained and repaired.

11. Consequently in the interest of justice and in the interest of both the parties, petitioner No.1 and the mentally challenged person, the following order passed:

1. The petitioner No.1 shall make the payment of Rs.15 lakhs required by the Aadhar within 2 weeks from today.
2. The petitioner No.12 shall, thereafter be entitled to sell the flat No.27 in Shiv Tirth No.1, Co-operative Housing Society Ltd., Bhulabhai Desai Road, Mumbai – 400 026 for a price not less than Rs.8 crores.
3. The purchase price of the said flat shall be paid by the purchaser by a demand draft in the name of the Prothonotary and Senior Master of this Court.
4. The Prothonotary and Senior Master of this Court shall allow the petitioner No.1 to withdraw 50% of the sale price in her name, which she may utilise in accordance with law applicable to non-residents.
5. The Prothonotary and Senior Master of this Court shall invest 50% of the sale price with a minimum of Rs.

5 crores in any nationalised Bank for a period of 61 months or such period as would obtain the highest amount of interest. The amount shall remain invested during the life time of the mentally challenged person Sarju Madhu Patel.

6. The said amount shall be re-invested from time to time during his life time.
7. The principal amount shall remain untouched during the life time of the mentally challenged person. The interest amount on the FDR shall be deposited by the bank in a separate account to be opened in the name of the Prothonotary and Senior Master of this Court.
8. The interest amount shall be utilised only for the maintenance, upkeep and any medical expenses to be incurred for the mentally challenged person.
9. The petitioners and/or Aadhar may apply to the Court for withdrawing any amount from the interest account for the necessities mentioned in clause 8 upon showing cause for the withdrawal.
10. The Prothonotary and Senior Master of this Court

shall allow the withdrawal subject to the permission of the Court and to the extent allowed by the Court and upon the conditions put by the Court.

11. The petitioner No.1 shall be entitled to withdraw the FDR as also all accrued interest on the FDR upon the death of the mentally challenged person and upon producing the death certificate in that behalf and upon the said fact being verified by the Prothonotary and Senior Master of this Court from Aadhar.
12. The petitioners shall pay the costs of the Commission fixed at Rs.50,000/- to the Court Commissioner.
13. The petition is disposed off accordingly.

(ROSHAN DALVI, J.)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment /order.**