

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1042 OF 2017  
ALONGWITH  
CIVIL APPLICATION (ST) NO. 9459 OF 2017  
AND  
CIVIL APPLICAITON (ST) NO. 9460 OF 2017  
IN  
FIRST APPEAL (ST) NO. 9457 OF 2017**

|                          |               |
|--------------------------|---------------|
| Dynacraft Machine Co.Ltd | ...Applicant  |
| Vs.                      |               |
| Mr.Vinod Shenoy          | ...Respondent |

**ALONGWITH  
FIRST APPEAL (ST) NO. 243 OF 2017**

|                 |               |
|-----------------|---------------|
| Mr.Rajiv Somani | ...Appellant  |
| Vs.             |               |
| Mr.Vinod Shenoy | ...Respondent |

Mr.Daurius Khambatta, Senior Advocate with Vishesh Kalra, Subit Chakrabarti, Suneet Tyagi, Jayshree Ramchandran & Vicky Pohuja I/b. Vidhii Partners for Appellants in FAST 9457/2017 and for Applicants in CAF 1042/2017.

Mr.Vineet Naik, Senior Advocate, Sumanth Anchan, Ravina Rajpal, Sayli Romey I/b. Singh & Singh Malhotra & Hegde for Appellant in FAST 243/2017.

Mr.Kunal Bhanage with Raghavan Sarathy, Akhil Sarathy, Devendra Avhad, Tejas Lunuja, Aparna Iyer I/b. Thodur Law Associates for Respondent.

**CORAM : S.C. GUPTE, J.**

**13 APRIL 2017**

**P.C. :**

Civil Application No.1042/2017 is for leave to appeal. The

Applicant is a third party, who is aggrieved by the impugned order passed by the City Civil Court at Bombay on 10 April 2015. By the impugned order, the City Civil Court appointed the Respondent as a legal guardian of one Jessica Lukmani, who was one of the shareholders of the Applicant and who sold her shares to other shareholders, which transaction is a subject matter of dispute before the National Company Law Tribunal ("NCLT"). A companion appeal from the same impugned order by another third party, who claims through Jessica Lukmani, has already been admitted by this court. In the premises, considering the fact that the interest of the Applicant herein is prejudicially affected, if the order of the appointment of legal guardian is allowed to operate, and accordingly the Applicant can be said to be aggrieved by the impugned order, the civil application is allowed in terms of prayer clause (a).

2           The other civil application, namely, Civil application (Stamp) No.9459/2017, seeks condonation of a delay of 688 days in filing the present first appeal. The application is on the footing that the impugned order was passed in the absence of the Applicant, though there were particular allegations made against the Applicant in para 14 of the mental health petition. It is submitted that the Applicant learnt of the impugned order only on 21 January 2017, when, on the basis of the impugned order, an application was made by the Respondent herein in the pending proceeding between the Applicant and Jessica Lukmani for being appointed as a legal guardian. In the premises, the delay of 688 days is adequately explained and needs to be condoned in the interest of justice. Accordingly, the civil application is allowed in terms of prayer clause (a).

3           By consent of parties, the first appeal itself is taken up for

admission. The appeal is admitted.

4 Civil application (Stamp) No.9460/2017 is for interim reliefs during the pendency of the first appeal. Though there is an omnibus prayer for staying the effect and operation of the impugned order appointing the Respondent as a legal guardian of Jessica Lukmani, learned Counsel for the Applicant presses only prayer clause (c), since that is the subject matter with which he is directly concerned at this stage and not generally with the person or properties of Jessica Lukmani. Prayer clause (c) claims a temporary restraint against the Respondent from representing himself as a legal guardian or next friend of Jessica Lukmani before the NCLT in pending company petition between the Applicant and Jessica Lukmani, being Company Petition No.19/2014. *Prima facie* the impugned order appointing the Respondent as legal guardian appears to be in breach of Sections 50(2), 51, 53, 54 and 57 of Mental Health Act, 1987. More particularly, *prima facie* there was no notice to or examination of the alleged mentally ill person, namely, Jessica Lukmani, as also of her mental illness or as to her mental capacity for taking care of herself or managing her property and also as to the suitability of the Respondent, as a legal heir of the mentally ill person, for being appointed as a legal guardian. In the premises, there is a case for an interim relief of the kind applied for by the Applicant.

5 Learned Counsel for the Respondent submits that in any event, his interest also cannot be prejudiced by forbidding him to appear in the pending company petition before the NCLT, since he has been duly appointed as a legal guardian of Jessica Lukmani on the footing that she is a mentally ill person. The grievance of the Respondent can be addressed, if

he is also allowed to intervene and appear at the hearing of the company petition in his individual capacity without prejudice to his right as a legal heir / next friend of Jessica Lukmani.

6           In the premises, the civil application is allowed in terms of prayer clause (c), subject to the right of the Respondent to intervene and appear as a claimant or as a purported constituted attorney of Jessica Lukmani before the NCLT in the pending company petition, without prejudice to his right in the present appeal, or otherwise generally, that is to say, in all cases other than the pending company petition, to claim as a legal guardian of Jessica Lukmani. The civil application is disposed of in the above terms.

7           In the meantime, the parties, including NCLT, to act on the authenticated copy of this order. Needless to add that these observations made by the court are for the purpose of deciding the three civil applications and considering the admission of the first appeal and these observations shall not influence the NCLT whilst determining the company petition.

8           First Appeal (Stamp) No.9457/2017 shall be tagged along with First Appeal No.243/2017. The Appellant to remove all office objections and get the first appeal numbered within two weeks from today.

9           Certified copy expedited.

**(S.C. GUPTE, J.)**