

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

WRIT PETITION NO. 12570 OF 2016

Mr. Rajiv Somani

..Petitioner.

Vs

Mr. Vinod Shenoy

.. Respondent

Mr. Vineet Naik, Senior Advocate i/b Singh & Singh and Malhotra & Hedge, Advocates for Petitioner.

Mr. Kunal Bhanage, i/b Thodur Law Associates, Advocates for Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 09/02/2017**

PC:

1. Not on Board. At the request of Mr.Naik, taken up for admission. Heard Mr. Vineet Naik, learned senior counsel for the petitioner and Mr. Kunal Bhanage, learned counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged (i) Judgment and order dated 10.4.2015 passed by the learned Judge, City Civil Court, for Greater Bombay, in Mental Health Petition No. 4 of 2015 as also (ii) Judgment and order dated 22.7.2016 passed by the learned Judge, City Civil Court, for Greater Bombay in Misc. Application No.4 of 2016.

3. By order dated 10.4.2015, the learned trial Judge allowed the petition filed by the respondent under section 53 of the

Mental Health Act, 1987 (for short, 'Act') and appointed him as a guardian of Jessica Iqbal Lukmani (Jessica Shenoy), mentally ill person to take care of her. The learned trial Judge appointed respondent as a Manager to look after the affairs and management of the person and properties of mentally ill person Jessica Iqbal Lukmani (Jessica Shenoy) described in the Schedule of properties at page 33 of the petition without any remuneration. The learned trial judge also directed the respondent not to dispose of and/or sell the movables or immovable property of the Mentally ill person without prior permission of the court.

4. The petitioner herein filed application under section 65 of the Act for recalling order dated 15.4.2015. By the impugned order, the learned trial Judge has rejected the application. It is against these orders, the petitioner has instituted the present petition.

5. Mr.Bhanage has raised a preliminary objection. He submitted that in view of Section 76, the petitioner has an equally efficacious alternate statutory remedy of filing an appeal in this Court.

6. Mr. Naik, therefore, seeks permission to withdraw this petition with liberty to file Appeal in this Court. He submitted that the petitioner will file application for excluding the period spent by him in prosecuting remedy under section 65 of the Act as also

this petition.

7. In view thereof, on the motion made by Mr Naik, Petition is allowed to be withdrawn with liberty as prayed for. It is made clear that I have not examined merits of the case. All contentions of the parties on merits are expressly kept open.

8. Mr. Bhanage states that in pursuance of order dated 10.4.2015, the respondent has made application for disposing of Flat no.212-B, Jolly Maker Apts, Cuffe Parade, Colaba. For a period of two weeks from today, the respondent will not file application in respect of properties at Alibag, District Raigad described at Sr.Nos 2 to 6 in schedule of properties mentioned at page 185 of the petition. Statements, on instructions, are recorded.

9. As far as the application made in respect of Flat no.212-B, Jolly Maker Apts., Cuffe Parade, Colaba, it is clarified that this Court has not stayed the proceedings. Order accordingly.

(R.G.KETKAR, J.)