

Anand

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

WRIT PETITION NO.9953 OF 2015

Nilesh Anant Bhoir

.Petitioner

Vs.

Yadav Kalu Patil & ors.

.Respondents

Mr.Sandesh Patil a/w. Mr.Chintan Shah i/b. Ms M.P.Kshirsagar,
Advocate, for the Petitioner

CORAM : R.G.KETKAR, J.

DATE : 23.03.2017

P.C.

. Not on board. At the request of Mr. Patil, taken up in the
production board.

2. Heard Mr. Patil, learned counsel for the Petitioner.

3. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Son of Defendant No.1' has challenged the Judgment and Order dated 15.07.2015 passed by the learned 6th Jt.C.J.S.D., Thane below Exh.59 in R.C.S.No.744 of 2008. By that order, the learned trial Judge rejected the Application made on behalf of Defendant No.1 seeking permission to examine son of Defendant No.1 as witness in place of Defendant No.1.

4. In support of this Petition, Mr. Patil invited my attention to the Application Exh.59 made on behalf of Defendant No.1 by the Petitioner herein. He also submitted that alongwith the Application, Certificate dated 30.12.2013 issued by P.D.HINDUJA NATIONAL HOSPITAL & MEDICAL RESEARCH CENTRE as also Certificate dated 28.03.2014 issued by Medical Superintendent, Regional Mental Hospital, Thane was enclosed. Certificate dated 28.03.2014 shows that Defendant No.1 was examined by Psychiatrist & Medical Superintendent on OPD basis and was found unfit for trial and defend himself at present due to hemiparesis. He also invited my attention to the impugned Order, wherein the learned trial Judge observed that this Certificate prima facie shows that Defendant No.1 is a person undergoing mental disability. He submitted that once the learned trial Judge observed that Defendant No.1 is a person with mental disability, he ought to have permitted the Petitioner, being son of Defendant No.1 to examine as witness on behalf of Defendant No.1. He, therefore, submitted that the impugned Order is liable to be quashed & set aside.

5. I have considered rival submissions advanced by Mr. Patil. I have also perused the material on record.

6. A perusal of Order XXXII, Rule 15 of the Code of Civil

Procedure, 1908 (For short “CPC”) shows that the provisions of Rules 1 to 14 (except rule 2A) apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons, who though not so adjudged, are found by the court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued. In the present case, Petitioner has not brought any material on record to show that Defendant No.1 is adjudged person of unsound mind. It is, therefore, necessary that enquiry is conducted for the purpose of finding out whether Defendant No.1 is incapable person by reason of any mental infirmity to protect his interest when he is being sued. By the impugned Order, the learned trial Judge has ordered preliminary enquiry as to mental status of Defendant No.1.

7. In view thereof, I do not find that the learned Judge has committed any error in the impugned Order. Hence, Petition fails and same is dismissed. As there was no stay to the impugned Order pending this Petition, the learned trial Judge will ensure that enquiry is conducted expeditiously.

(R.G.KETKAR, J.)