

CWP No.23863 of 2016 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.23863 of 2016 (O&M)
Date of decision:21.08.2017**

Ravinder Karas

...Petitioner

Versus

Oriental Bank of Commerce and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajesh Garg, Senior Advocate, with
Ms. Nimrata Shergill, Advocate, for the petitioner.

Mr. B.R.Bansal, Advocate,
for respondent no.1.

Mr. Deepak Jindal, Advocate, for
Mr. Arvind Rajotia, Advocate, for respondents no.2 and 3.

Mr. Deepak Jindal, Advocate,
for respondent no.4.

Mr. Pardeep Sharma, Advocate,
for respondent no.5.

Mr. Amit Kumar Goyal, Advocate,
for respondent no.6.

Mr. H.N.Mehtani, Advocate,
for respondents no.8 and 10.

Mr. Baldev Singh and Ms. Neelam Chaudhary, Advocates,
for Mr. R.S.Badhran, Advocate, for respondents no.7 and 9.

None for respondent no.11.

Mr. Jai Vir Yadav, Advocate,
for respondent no.12.

Rakesh Kumar Jain, J.

In brief, one Har Bhajan Singh Rana (hereinafter referred to as

“HR”) was married to Harinder Kaur Rana. He was blessed with two children, namely, Ravinder Karas wife of Eric Karas and Kawal Deep Singh Rana. HR lost his son Kawal Deep Singh Rana in the year 1989 and his wife Harinder Kaur Rana on 04.10.2012. Petitioner is the only living child of HR. HR is a Chartered Electrical Engineer who came to UK in 1954, settled initially in London before settling finally in Scotland in 1958. HR is presently 90 years of age. He came to India in 1993 along with his wife and lived for some time in his father's house at Safdarganj Enclave, New Delhi. Thereafter, HR moved with his wife to Karnal to live in House No.2163, Sector-7, Urban Estate, Karnal in Haryana, where on 18.08.2016, suffered a massive intra cerebral hemorrhage. He was noticed, lying unconscious, by his cousin Gurdip Singh and was shifted to Gyan Bhushan Nursing Home, Kunjpura Road, Karnal and following the advice of the local doctor at Karnal was further shifted to Apollo Hospital, New Delhi on the next day i.e. 19.08.2016, where he was operated upon on the same night. The petitioner was informed by her uncle Gurdip Singh about the condition of HR. She applied for her visa and came to India on 09.09.2016 to look after her father. The petitioner is a Ph.D. in Psychology and is working part time as Director of Psychological Therapies for East London NHS Foundation Trust in London and returned to UK due to her professional commitments. However, she came to India again on 07.10.2016. The doctors at Apollo Hospital certified on 07.10.2016 that HR was not in a condition to take decision about his personal or financial matters and required constant medical care and hospitalization. They further certified that HR required prolonged hospitalization and advised the petitioner to take HR to England not only for better treatment but also to look after him. The petitioner,

thus, on 22.10.2016, took HR to England in the company of a Medical Attendant, namely, Dr. Sumit Mediratta, Consultant Neuro Surgery and incurred expenses of £6100 towards the travelling and medical consultant. HR was admitted to Whittington Hospital, Magdala Ave. London N19 5NF, and is being treated there. Since HR required continuous treatment for his ailment, therefore, on 03.11.2016, the Deprivation of Liberty Safeguards, Safeguarding Adults Unit, Islington Council, after assessing HR's mental condition, appointed the petitioner to act as representative of HR.

The petitioner has been incurring expenses on the treatment of HR. Her husband Eric Karas, a British National, has retired since 2012. She has a daughter who is getting education from a private institution for which she has to spend £6150 per term or £1560 per month. On the other hand, HR had various fixed deposits in various banks in India, which are arrayed as respondents, collectively amounting to ₹16 crores. Since the petitioner has a limited income and was not in a position to independently incur the expenses, therefore, she opened a separate bank A/c No.86674668 in Hustlergate (306355) Branch, Lloyds Bank plc, PO Box 99, BX1 1LT, for the purpose of transferring the amount of HR to this account solely to be used for his treatment. It is averred in the petition that she had already deposited £20,000 in this account for the treatment of HR, whereas the estimated expenditure for nursing and hospitalization of HR is around £1300 per week (£4800 per month), which does not include the cost for physiotherapy, which again is estimated at around £125 per day (£625 per week or £2500 per month). The total costs including medication and other medical expenses of HR would be close to £10,000 per month. The petitioner has also appended with the petition

copy of the contract executed by her with the Nursing Home at England in order to apprise the Court about the expenses to be incurred.

With the aforesaid background of the case, the petitioner has made two prayers in this petition, firstly, to restrain the respondents from releasing the amounts lying in the joint fixed deposits of HR to any other person/joint account holder till such time HR regains his mental and physical abilities to take care of himself and his financial matters and secondly, to direct the respondents to transfer the amount lying in the fixed deposits of HR in India in A/c No.86674668 in Hustlergate (306355) Branch, Lloyds Bank plc, PO Box 99, BX1 1LT, opened by the petitioner solely for the purpose of treatment of HR in England. She has also made another prayer to issue any other direction which this Court may deem fit and proper in the facts and circumstances of the case.

Since the petitioner has also made the prayer for interim directions, therefore, vide order dated 22.02.2017, interim directions were issued by this Court, which read as under:-

“Written statement filed on behalf of newly added respondent No.12, is taken on record.

Petitioner Ravinder Karas wife of Mr. Eric Karas, has filed the present petition seeking a writ in the nature of prohibition to restrain the respondents-banks from releasing amount in the joint fixed deposits of her father Mr. Harbhajan Singh Rana, to any other person (joint holder) till such time her father regains mental and physical faculties to take care of himself. A direction has also been sought to transfer the amount in the fixed deposits in her account No.86674668 in Hustlergate (306355) Branch plc, PO Box 99, Bx1 1LT, as she has opened the said account in the United Kingdom for sole purpose of treating her father in United Kingdom. It was revealed in the petition that Mr. Harbhajan Singh Rana, is admitted in a Care Home and petitioner requires money to enable her to

meet the medical expenses.

On the application of one Pawandeep Singh, he was impleaded as a party and was given an opportunity of hearing.

In the reply filed by the above said added respondent, it has been revealed that Mr. Harbhajan Singh Rana, had suffered a brain haemorrhage on 18.8.2016 and was looked after by Mr. Sontosh Yadav and the added respondent. It has been admitted that the petitioner had taken Mr. Harbhajan Singh Rana, to United Kingdom and got him admitted in Whittington Hospital in London. As per pleadings, he remained admitted in Hospital from 23.10.2016 and was discharged on 8.12.2016.

From the documents appended with the petition, it is apparent that at present Mr. Harbhajan Singh Rana is admitted in Care UK, a nursing home in United Kingdom under the guardianship of Ravinder Karas, petitioner, as per the conditions of local law.

A perusal of letter Annexure P10, dated 3.11.2016, issued by ISLINGTON Deprivation of Liberty Safeguards Office London to the petitioner shows that after the outcome of the review of the patient by the Best Interests Assessor (BIA), Paul Ortylewski at Cloudesley Ward, Whittington Hospital, he is being cared for appropriately in his best interest as per the Mental Capacity Act, 2005 Deprivation of Liberty Safeguards (DoLS).

This Court vide order dated 14.2.2017, had directed the petitioner for furnishing the following information: -

- (i) Harbhajan Singh being alive under treatment in Nursing Home;
- (ii) Medical bills pertaining to his treatment;
- (iii) the feasible mode of direct transfer from his exclusive accounts from the respondent-banks to the account of the Nursing Home and the specific account numbers of the Nursing Home; and
- (iv) undertaking of the petitioner to indemnify the bankers, in case of transfer of the amount belonging to the patient in the account of petitioner, any fraud is found to have been played upon any one including the Court.

The relevant details have been provided indicating that the above said Mr. Harbhajan Singh Rana, remained admitted in above stated Whittington Hospital, till 8.12.2016. The details of the invoices/credit notes raised, payments received and also payments and balance of the amount in the account have been mentioned which are as follows: -

Statement

Date: 06/02/2017
Account Number 472127
Care Home Lennox House
Resident Mr.Harbhajan Singh Rana

Invoice/Credit notes raised

Invoice no.	Inv. Date	Curr. Amount	Text
LENN0003689	13.12.2016	£2,500.00	Mr.Harbhajan Singh Rana
LENN0003706	13.12.2016	£4,285.71	Mr.Harbhajan Singh Rana 8.12.2016-31.12.2016 Fee
LENN0003799	3.1.2017	£5,535.71	Mr.Harbhajan Singh Rana 1.1.2017-31.1.2017 Fee
LENN0003907	1.2.2017	£5,000.00	Mr.Harbhajan Singh Rana 1.2.2017-28.2.2017 Fee
Total		£17,321.42	

Payments rec'd

Reference	Inv. Date	Curr. Amount	Text
Cheque 12.12.2016	12.12.2016	£2,500.00	Cheque paid in at LENNO for Admin Fee.
Cheque 12.12.2016	12.12.2016	£5,000.00	Cheque paid in at LENNO for 4 weeks Advance Fee.
Direct Debit	31.01.2017	£4,821.42	D.D.Payment
Total		£12,321.42	
Total Invoice Raised		£17,321.42	
Less Payments Rec'd		£12,321.42	
Balance on A/C		£5,000.00	
Holding Deposit Paid		£2,500.00	

In the reply filed on behalf of respondent no.12 Pawandeep Singh, the ailment of Mr. Harbhajan Singh Rana, has been admitted. He being under treatment at United Kingdom, is also admitted but it has been revealed that under the Mental Health Act, a petition has been filed by said respondent for judicial inquisition by him and for appointment of Manager of the mentally sick person. In that case, the petitioner has been made a defendant.

Petitioner has not disclosed the said fact in the writ petition for the reasons best known to her.

Since a controversy has been raised regarding the bona fide of the petitioner, I do not deem it appropriate, at this stage, to adjudicate upon the same, however, in the interest of justice, I deem it appropriate to perform the role of Court of Wards under the Mental Health Act, 1987 to look into the welfare of Mr. Harbhajan Singh Rana, who is admittedly not in a fit mental condition to look after himself.

In the reply filed by Senior Manager, Canara Bank, Sector 12, Karnal, it has been informed that the patient has got Rs.6.20 crores INR lying with the said Bank which cannot be disbursed unless and until the relevant certificates/orders under the Mental Health Act, 1987, or the National Trust Act, 1999, are produced by the petitioner as legal guardian of Mr. Harbhajan Singh Rana. Reference has also been made to pendency of civil suit filed by the added respondent before the Courts at Karnal, for appointment as Manager. Father of petitioner is also having independent accounts in other banks. He also holds joint account with others. Some of the emails have also been placed on record indicating disturbed relationship of Mr. Harbhajan Singh Rana, and the petitioner.

In peculiar circumstances of this case, without expression of any opinion regarding the maintainability of the present petition as well as the clash of interests of the petitioner or respondent no.12 pending before any other forum, it will be expedient in the interest of justice to ensure that adequate expenditure is available to be incurred regarding treatment of Mr.Harbhajan Singh Rana, who is resident of United Kingdom, a person of Indian origin, having account in different banks in India, it is ordered that the Senior Manager, or any other officer of the Canara Bank, Sector 12, Karnal, would immediately transfer a sum equivalent to 17321.42 pounds + admission charges, as the expenditure of nursing care in United Kingdom till 6.2.2017 in the account of Care UK Connaught House, 850 The Crescent, Colchester Business Park, Colchester Essex C049QB, T1206 752552 www.careuk.com. Out of said amount, it will be open to the petitioner to seek reimbursement from the Care UK for £12,321.42.

Besides the above said amount, taking into consideration the approximate nursing charges at Care UK, Connaught House, regarding Mr. Harbhajan Singh Rana, another sum equivalent to 20000 pounds will be transferred as tentative care charges directly into the bank account of Care UK above said, within a period of one week. The above said amounts shall be transferred from any of the following accounts: -

Sr. No.	Account Number
1	3264407000006/1
2	3264407000006/2
3	3264407000006/3
4	3264407000006/4
5	3264407000007/1
6	3264407000008/1
7	3264407000008/2
8	3264417000001/2
9	3264417000004/1
10	3264417000005/1
11	3264417000005/2
12	3264417000006/1
13	3264417000006/2
14	3264417000006/3

The details of the statements of the amounts transferred will be submitted by respondent Nos.2 and 3 to this Court on next date of hearing.

It will be open for the petitioner and respondent no.12, to cross check the expenditure incurred at Care UK on the nursing care of Mr. Harbhajan Singh Rana, mentally incapable of looking after himself and ensure that welfare of Mr. Harbhajan Singh Rana, is taken care of out of the above said amounts.

Anything said in this order is subject to the final decision of the writ petition and will not effect any other litigation which is pending pertaining to the expenditure, management and mental illness of Mr. Harbhajan Singh Rana.

Adjourned to 5.4.2017.”

It is pertinent to mention that during the pendency of this petition, an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 was filed at the instance of Pawandeep Singh son of Ravinder Pal Singh, resident of House No.188-C, Model Town, Karnal to implead him as party respondent

no.2 in the writ petition.

The said application was allowed on 14.02.2017. Thereafter, the newly added respondent no.12 also filed his reply besides the replies filed by the respondent-banks. Respondent no.12 claims himself to be related to HR. He has alleged that he is the son of Ravinder Pal Singh, who is the son of Jaspal Singh, who along with Amar Singh and one Sher Singh are the maternal uncles of HR. According to respondent no.12, HR had strained relations with the petitioner and has raised an issue about the transfer of the money lying in various bank accounts of HR in India to the account opened by the petitioner in England. In his reply, respondent no.12 has alleged that HR has either accounts in his individual name or in the joint name but insofar as the petitioner is concerned, she is a third party, not even appointed as a nominee and, therefore, the transfer of money of HR to the account opened by the petitioner in England for the purpose of alleged treatment of HR should not be transferred. It is also alleged that he had already filed an application under Section 50, 52, 53, 54 and 71 of the Mental Health Act, 1987 before the Civil Court at Karnal for judicial inquisition and appointment of Manager of HR, which is still pending.

In reply, learned counsel for the petitioner has submitted that after the interim order was passed by this Court on 22.02.2017, a new development has occurred in England as an order has been passed by the Court of Protection under the Mental Capacity Act, 2005, as applicable in England (hereinafter referred to as the "Court of Protection in England"), in the matter of appointment of a Deputy for the property and affairs of HR. He has also submitted that the objection raised by respondent no.12 or by the respondent-

banks about the transfer of money of HR in the account opened by the petitioner could be there but they cannot raise any objection if the amount is transferred to the account of the HR only in the Santander Bank, the details of which is as under:-

“Account name	:	Mr. Har Bhajan Singh Rana & Mrs. Harinda Rana
Account number	:	03662639
Sort code	:	09 01 26
BIC	:	ABBYGB21_XXX
IBAN	:	GB49 ABBY 0901 2603 6626 39”

The petitioner has also placed on record the list of banks as Annexure P-12 in which HR holds his accounts. He has submitted that the Court can order for transferring of the amount lying exclusively in the accounts of HR to his aforesaid account in England so that the money, which has been saved by HR for his rainy days, may be used by him now, otherwise this money would remain lying in his accounts in India and HR may suffer because of lack of resources. He has further submitted that while appointing the petitioner as a Deputy, vide order dated 06.03.2017, by the Court of Protection in England, the authority of the Deputy have been delineated. The entire order of the Court of Protection in England is also reproduced as under for a quick glance:-

**“COURT OF PROTECTION
MENTAL CAPACITY ACT 2005**

**In the matter of
HAR BHAJAN SINGH RANA**

**ORDER APPOINTING DEPUTY FOR
PROPERTY AND AFFAIRS**

made by N. Davies, an authorised officer of the court
at First Avenue House, 42- 49 High Holborn, London, WC1V 6 NP
on 6th March 2017

UPON the court being satisfied that Har Bhajan Singh Rana lacks capacity to make various decisions for himself in relation to a

matter or matters concerning his property and affairs, and that the purpose for which this order is needed cannot be as effectively achieved in a way that is less restrictive of his rights and freedom of action.

AND UPON the court being satisfied that Har Bhajan Singh Rana's interests and position can be properly secured without being joined to these proceedings and without making any further direction concerning Har Bhajan Singh Rana's participation in these proceedings.

IT IS ORDERED that :

1. Appointment of deputy

- (a) Ravinder Kaur Karas of 29 Tavistock Terrace, London N19 4BZ is appointed as deputy (“the deputy”) to make decisions on behalf of Har Bhajan Singh Rana that he is unable to make for himself in relation to his property and affairs, subject to any conditions or restrictions set out in this order.
- (b) The appointment will last until further order.
- (c) The deputy must apply the principles set out in section 1 of the Mental Capacity Act 2005 (“the Act”) and have regard to the guidance in the Code of Practice to the Act.

2. Authority of deputy

- (a) The court confers general authority on the deputy to take possession or control of the property and affairs of Har Bhajan Singh Rana and to exercise the same powers of management and investment, including selling and letting property, as he has as beneficial owner, subject to the terms and conditions set out in this order.
- (b) The deputy cannot purchase any freehold or leasehold property on Har Bhajan Singh Rana's behalf without obtaining further authority from the court.
- (c) The deputy may (without obtaining any further authority from the court) dispose of Har Bhajan Singh Rana's money or property by way of gift to any charity to which he made, or might have been expected to make, such gifts, and, on customary occasions, to persons who are related to or connected with him, provided that the value of each such gift is not unreasonable having regard to all the circumstances and, in particular, the size of his estate.

3. Reports

- (a) The deputy is required to keep statements, vouchers, receipts and other financial records.
- (b) The deputy must submit a report to the Public Guardian as and when required.

4. Costs and expenses

The deputy is entitled to be reimbursed for reasonable expenses incurred provided they are in proportion to the size of Har Bhajan Singh Rana's estate and the functions performed by the deputy.

5. Security

- (a) The deputy is required forthwith to obtain and maintain security in the sum of £1,50,000 in accordance with the standard requirements as to the giving of security.
- (b) The deputy must ensure that the level of security ordered by the court is in place before discharging any of the functions conferred by this order.

6. Notification

The deputy must, within 14 days of service of this order by the court, notify Har Bhajan Singh Rana personally that the court has made a decision by providing him with a notice of proceedings about you in the Court of Protection (form COP14) and a copy of this order. The requirement for the person providing notification to provide evidence of such notification is dispensed with.

7. Right to apply for reconsideration of order

Any person who is affected by this order may apply to the court of reconsideration of the order within 21 days of the order being served by filing an application notice (form COP9) in accordance with Part 10 of the Court of Protection Rules 2007.”

I have heard learned counsel for the parties and examined the available record with their able assistance.

There are certain admitted facts, namely, the petitioner is the only living child of HR; she is married to a British National and is settled in England; she does not have much resources at her end to incur expenses for the treatment of her father; respondent no.2 is not a near relation and is rather a distant relation of HR; petitioner took pains to take HR to England from India during his medical crisis; HR has saved money and deposited in various banks in India both in his individual and joint accounts; petitioner has been appointed as Deputy of HR by the competent court of England under the provisions of the Mental Capacity Act, 2005, as applicable in England; petitioner is not

asking for transfer of the amount lying in individual and joints accounts of HR to the account opened by the petitioner rather she has prayed that the amount of HR lying in his individual and joint accounts maintained in India be transferred to the account of HR maintained in England.

The resume of the aforesaid facts and circumstances are sufficient to drive this Court to think about the health and well being of ailing HR who himself had saved money during his heydays to use it during his rainy days. I would also mention here that even if, as alleged by respondent no.2, HR had strained relations with the petitioner when he was hale and hearty but the petitioner, being a daughter, has not forgotten her *Dharma* (faith/moral obligation) to serve her ailing father.

Since the property/money of HR has already been secured by the Court of Protection in England, as per which her daughter, who has been appointed as Deputy, has been restrained from purchasing any freehold or leasehold property on HR's behalf and has been directed to keep statements, vouchers, receipts and other financial records and submit a report to the Public Guardian as and when required, therefore, this Court has no doubt that the money to be transferred from the accounts of HR maintained by him in India to the account maintained by him in England shall be used by his Deputy (petitioner herein) only for the treatment of ailing HR and his other day to day needs and necessary requirements in terms of the order dated 06.03.2017 passed by the Court of Protection in England.

Thus, in view of the aforesaid facts and circumstances, the present petition is hereby allowed and the respondent-banks are directed to transfer the amount lying in the individual accounts maintained by HR in India to his

account maintained by him in England, the particulars of which has already been given above.

Keeping in view the urgency involved in the matter, as the amount may be required by HR for his treatment immediately, the respondents-banks are directed to comply with this order forthwith without any further delay.

August 21, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No