

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 411/2017**

% **27th October, 2017**

MEENU SETH Appellant

Through: Ms. Gauri Gupta, Advocate.

versus

BINU SETH & ORS. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM Appl. No. 38285/2017 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

FAO No. 411/2017

1. This first appeal is filed under Order XLIII Rule 1 CPC impugning the judgment of the trial court dated 9.6.2017 by which the trial court has dismissed the petition filed by the appellant under the Mental Health Act, 1987 (hereinafter referred to as 'the Act') for appointment of the appellant as the guardian to take care of the person

and property of Sh. Binu Seth. Sh. Binu Seth is the husband of the appellant and is living with the respondent nos. 2 & 3 who are the mother and brother of Sh. Binu Seth. Sh. Binu Seth has been arrayed as respondent no. 1 in this appeal.

2. The facts of the case are that the appellant filed the subject petition in the court below praying for relief of holding judicial inquisition *qua* mental condition of her husband Sh. Binu Seth/respondent no. 1 and for further prayer of the appointment of the appellant as the guardian of the person and properties of Sh. Binu Seth. Effectively, the reliefs when read holistically would mean that the appellant pleads that the respondent no.1 is a mentally ill person as defined under the Mental Health Act, 1987 and therefore judicial inquisition proceedings be conducted in terms of Section 50 of the Act and thereafter the appellant be appointed as the Manager of the person and properties of the respondent no. 1.

3. Appellant was married to the respondent no.1 on 27.4.2002 in Delhi as per Hindu rites and ceremonies and she lived with her husband till 1.5.2011. It was pleaded by the appellant in her petition that she thereafter left the company of the respondent no. 1

herein due to adverse circumstances created by respondent nos. 2 & 3 herein. It was pleaded in the petition by the appellant that respondent no. 1 is a patient of mental disorder and that the respondent nos. 2 & 3 are keeping away the respondent no. 1 and not allowing the appellant to take care of respondent no. 1 including getting his medical treatment done. It is pleaded in the petition by the appellant that the respondent nos. 2 & 3 want to usurp the entire joint family properties, including the share of respondent no. 1/Binu Seth and respondent no. 1/Sh. Binu Seth is in dire need of appointment of guardian of his person as well as his properties.

4. In the joint written statement filed by the respondent nos. 2 & 3 herein before the trial court it was pleaded that the respondent no. 1 is not a mentally ill person as defined in Section 2(1) of the Act. It was also pleaded that the respondent no.1 never desired that any treatment be got done of the alleged mental illness of the respondent no. 1. It was further pleaded that there is no property movable or immovable exclusively in the name of the respondent no. 1. It was further pleaded that appellant had filed a petition for divorce against the respondent no. 1 on the basis of false and concocted allegations of

cruelty; and that such divorce petition was later on dismissed as withdrawn on 13.10.2011 because appellant could not prove the truthfulness of her false allegations against the respondent no. 1. Respondent nos. 2 & 3 pleaded by their written statement that the petition was only filed to harass the respondents and therefore the petition be dismissed.

5. By the impugned judgment trial court has dismissed the petition by arriving at two conclusions. The first conclusion is that Sh. Binu Seth/respondent no.1 as per the report given by Board of Institute of Human Behaviour & Allied Sciences (IHBAS) is able to take care of himself independently but cannot take care of his properties. Trial court has also observed that respondent no. 1 was examined in person by the trial court and during this examination he answered to all the questions which were put to him very well without any hesitation and respondent no.1 behaved normally. Trial court held that even if it is assumed that there are joint family properties, and that a Manager has to be appointed of the properties of respondent no. 1/Sh. Binu Seth, even then the appellant was not a suitable person to be appointed as per Section 54 (3) of the Act and hence she cannot be appointed as a

Manager of the properties of the respondent no. 1/Sh. Binu Seth. This conclusion of the trial court of appellant being not a suitable person was arrived at on account of various litigations initiated by the appellant against the respondent no.1/Sh. Binu Seth being the divorce petition as also a civil suit which was filed by the appellant.

6. For the purpose of disposal of this petition the provisions of Section 2(1), 50, 51, 52, 54, 56,57, 58 and 59 of the Act are required to be referred to and these provisions read as under:-

“2(1) **“mentally ill person”** means a person who is in need of treatment by reason of any mental disorder other than mental retardation;

50. Application for judicial inquisition.—(1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either—

- (a) by any of his relatives, or
- (b) by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925), or
- (c) by the Advocate-General of the State in which the alleged mentally ill person resides, or
- (d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate,

to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

(2) On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall, in like manner, serve a notice on the person having the custody of the alleged mentally ill person to produce such person at the said place and at the said time, for

being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person:

Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined by issuing a commission as provided in the Code of Civil Procedure, 1908 (5 of 1908).

(3) A copy of the notice under sub-section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.

(4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors.

51. Issues on which finding should be given by District Court after inquisition.—On completion of the inquisition, the District Court shall record its findings on,—

- (i) whether the alleged mentally ill person is in fact mentally ill or not, and
- (ii) where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.

52. Provision for appointing guardian of mentally ill person and for manager of property.—(1) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian under section 53 to take care of his person and of a manager under section 54 for the management of his property.

(2) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order under section 54 regarding the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager.

54. Appointment of manager for management of property of mentally ill person.—(1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of Wards to take charge of such property, and thereupon notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.

(2) Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situated, direct the Collector to take charge of the person and such part of the property or interest therein of mentally ill person as cannot be taken charge of by the Court of Wards.

(3) Where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or sub-section (2), as the case may be, the District Court shall appoint any suitable person to be the manager of such property.

56. Manager of property to execute bond.—Every person who is appointed as the manager of the property of a mentally ill person by the District Court or by the Collector shall, if so required by the appointing authority, enter into a bond for such sum, in such form and with such sureties as that authority, may specify, to account for all receipts from the property of the mentally ill person.

57. Appointment and remuneration of guardians and managers.—(1) No person, who is the legal heir or a mentally ill person shall be appointed under section 53, 54 or 55 to be the guardian of such mentally ill person or, as the case may be, the manager of his property unless the District Court or, as the case may be, the Collector, for reasons to be recorded in writing, considers that such appointment is for the benefit of the mentally ill person.

(2) The guardian of a mentally ill person or the manager of his property or both appointed under this Act shall be paid, from out of the property of the mentally ill person, such allowance as the appointing authority may determine.

58. Duties of guardian and manager.—(1) Every person appointed as a guardian of a mentally ill person or manager of his property, or of both, under this Act shall have the care of the mentally ill person or his property, or of both and be responsible for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

(2) Where the person appointed as guardian of a mentally ill person is different from the person appointed as the manager of his property, the manager of his property shall pay to the guardian of the mentally ill person such allowance as may be fixed by the authority appointing the guardian for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

59. Powers of manager.—(1) Every manager appointed under this Act shall, subject to the provisions of this Act, exercise the same powers in regard to the management of the property of the mentally ill person in respect of which he is appointed as manager, as the mentally ill person would have exercised as owner of the property had he not been mentally ill, and shall realise all claims due to the estate of the mentally ill person and pay all debts and discharge all liabilities legally due from that estate:

Provided that the manager shall not mortgage, create any charge on, or,

transfer by sale, gift, exchange or otherwise, any immovable property of the mentally ill person or lease out any such property for a period exceeding five years, unless he obtains the permission of the District Court in that behalf.

(2) The District Court may, on an application made by the manager, grant him permission to mortgage, create a charge on, or, transfer by sale, gift, exchange or otherwise, any immovable property of the mentally ill person or to lease out any such property for a period exceeding five years, subject to such conditions or restrictions as that Court may think fit to impose.

(3) The District Court shall cause notice of every application for permission to be served on any relative or friend of the mentally ill person and after considering objections, if any, received from the relative or friend and after making such inquiries as it may deem, necessary, grant or refuse permission having regard to the interests of the mentally ill person.”

(emphasis added)

7. Besides the aforesaid provisions there are also other provisions with respect to dealing with the properties by the manager/guardian of the mentally ill person, and which are provisions of Sections 62 to 73 of the Act, and since nothing much turns upon the said provisions for disposal of this appeal, the same are not being reproduced in this judgment.

8. A reading of the definition of mentally ill person under Section 2(l) of the Act shows that a person who is mentally retarded is not a mentally ill person for the purposes of the Act. Section 50 of the Act provides that the petition under the Act for holding judicial inquisition as to a mentally ill person can be made by any of his relatives. On receiving such an application notices are issued to the

person with whom the alleged mentally ill person is residing as also the mentally ill person himself. As per Section 51 of the Act findings are given by the District Court after inquisition as to whether the person alleged to be mentally ill is in fact mentally ill or not and if the person is mentally ill whether he is incapable of taking care of himself and/or managing his property or the mentally ill person is only incapable of managing his property. Depending upon whether a person is mentally ill and hence cannot take care of his person and/or his property, a manager of a property is appointed and this is provided under Section 52 of the Act. As per Section 52 of the Act, a guardian is appointed both for the person and/or property of mentally ill person and in case a mentally ill person is only incapable of managing his property and not his person, a manager is only appointed for his property. Section 54 Sub-Section 3 of the Act provides that it is only a suitable person who can be appointed as manager of the property of the mentally ill person. The provision of Section 56 of the Act requires that the appointed manager has to execute a bond and the provision of Section 58 of the Act provides for duties of the guardian and manager. Section 59 of the Act provides for the powers of the manager. The

other provisions thereafter deal with submitting of accounts in Court or taking permission of the District Court for transfer by way of sale etc of the property of a mentally ill person.

9. In the present case, the IHBAS has given its report dated 19.5.2016 and which report is authored by Dr. Amit Garg, Assistant Professor of Psychiatry, Dr. Sumit Kumar Gupta, Assistant Professor of Psychiatry, Dr. Pankaj Kumar, Assistant Professor of Psychiatry and Dr. U.K. Sinha, Vice-Chairman of the Medical Board. This report reads as under:-

“Court: Dr. Shahabuddin, Addl. District Judge- II (N/W), Room No.317, 3rd Floor, Rohini Courts, Delhi.

Reference: Hon’ble Court order dated 03.03.2016 vide GP No.02/2015, Smt. Meenu Seth Vs. Binu Seth.

The patient **Binu Seth** was examined by the Standing Medical Board at IHBAS on 18.05.2016 and opined that the client is diagnosed to be having Borderline Intelligence (ICD Code – R41.83 – other symptoms and signs involving cognitive functions and awareness) with I.Q. of 78 on Binet-Kamath Test. He is currently able to take care of self independently, but not of property.

Sd/-

(Dr. Amit Garg)

Asstt. Prof. of Psychiatry

Member

Sd/-

(Dr. Pankaj Kumar)

Asstt. Prof. of Psychiatry

Member

Sd/-

(Dr. Sumit Kumar Gupta)

Asstt. Prof. of Psychiatry

Member

Sd/-

(Dr. U.K. Sinha)

Vice-Chairman of

Medical Board

Member”

10. For over one year after filing of the report of IHBAS and till the impugned judgment was passed by the trial court on 9.6.2017 admittedly no objections were filed by the appellant to the report of IHBAS dated 19.5.2016. Once admittedly no objections are filed challenging the report of IHBAS, there does not arise any disputed question of facts requiring trial. I, therefore, reject the argument urged on behalf of the appellant that the petition could not have been disposed of without trial.

11. The report of the Medical Board of IHBAS shows that the patient Sh. Binu Seth/respondent no.1 was capable of taking care of his person independently, but he cannot take care of his property. The issue, therefore, was whether the appellant should be appointed as the manager of the property of respondent no.1/Sh. Binu Seth. In this regard, the trial court has rightly referred to the provision of Section 54(3) of the Act that only a suitable person can be appointed as a manager of the property of respondent no.1 and that appellant is not a suitable person because appellant had not only filed divorce proceedings alleging acts of cruelty against the respondent no.1 but also there was one other civil suit/litigation initiated by the appellant

against the respondent no.1. It is noted that admittedly the divorce petition filed by the appellant against respondent no.1 was withdrawn although respondent no.1 was *ex-parte*. Another suit being Suit No.255/2011 was filed by the appellant in the court of the Civil Judge, Rohini, Delhi for injunction and in which respondent no.1 was a defendant. Accordingly, the trial court has rightly held that appellant cannot be a suitable person under Section 54 (3) of the Act to take care of the property of the respondent no.1.

12. The trial court by the impugned judgment has held that there are no individual properties of Sh. Binu Seth and even assuming there are joint family properties, the appellant is not a suitable person. It is seen that really the endeavour of the appellant is to take control of the joint family properties and that failure of the appellant in the subject petition under the Mental Health Act will not mean that the appellant is in any manner prevented from filing any suit seeking to enforce her right as a member of the joint family assuming that there exists a Joint Hindu Family/Hindu Undivided Family (HUF). Thus the appellant is not in any manner prejudiced as she can always file a suit seeking her rights in HUF properties assuming that there is an HUF,

and which aspect will only be considered when the appellant initiates a civil suit in an appropriate Court for appropriate reliefs.

13. Though learned counsel for the appellant argued that the trial court could not have on the basis of questions put to respondent no.1 and taking his answers held that respondent no.1 was not a mentally ill person, however, this argument is only valid at the first blush because when we delve into the issue it is seen that actually the impugned judgment is independently based on the report of the Medical Board of IHBAS dated 19.5.2016. Some of the relevant observations of trial court for dismissing the petition are contained in paras 10 to 13 of the impugned judgment and these paras read as under:-

10. In view of such report of medical board, coupled with examination of Sh. Binu Seth conducted earlier before this Court, as per provisions of Section 50 of MH Act, further coupled with entire facts and circumstances of this case, this Court is of the considered opinion that Sh. Binu Seth is not suffering from any mental disorder and cannot be considered as mentally ill person as per Section 2(l) of MH Act. In the further considered opinion of this Court, he is simply suffering from some sort of mental retardation. For these reasons, in the further considered opinion of this Court, there is no need for appointing any guardian, qua his person.

To this extent, there is no merit in the petition under discussion for appointing petitioner as guardian of person of Sh. Binu Seth.

11. As regards the other relief claimed in this petition, qua seeking appointment of petitioner as manager for the properties, coming to the share of Sh. Binu Seth, this court is prima-facie of the considered opinion that petitioner has miserably failed to satisfy this Court, by putting any relevant

papers/documents on record, to the effect that Sh. Binu Seth has any property independently in his name at present.

12. For the sake of arguments, if it is presumed that there are certain joint family properties, in which Sh. Binu Seth has also some share, even in that situation, to the considered opinion of this Court, the petitioner is not found to be a suitable person, as per mandate of Section 54(3) of MH Act, so as to appoint her as manager, qua such properties. It is due to the reason that there are bitter relations between the parties herein and particularly between petitioner and her husband Sh. Binu Seth. As per record, these parties are involved in various litigations and in some of these litigations, even Sh. Binu Seth has been joined as opposite party by the petitioner herein. Certified copy, as annexure R-1, has been filed on record, on behalf of respondents, pertaining to suit for permanent injunction reportedly filed in year 2011 by Smt. Meenu Seth i.e., petitioner herein in the Court of Ld. Senior Civil Judge, Rohini Courts, Delhi in which Sh. Binu Seth has also been joined as defendant No. 1 therein, besides respondents herein as defendants No. 2 and 3 respectively. A certified copy of a divorce petition under HM Act bearing HMA No. 514/2011, has also been filed on record, on behalf of respondents, which was also reportedly filed by petitioner herein in year 2011, u/s 13 of HM Act against her husband Sh. Binu Seth, seeking divorce from him on the ground of cruelty as mentioned in detail in this petition. Due to involvement of parties herein in various litigations, including those mentioned above, this Court is of the considered opinion that there are no cordial relations even between petitioner and her husband Sh. Binu Seth so as to treat the petitioner as suitable person for being appointed as manager of properties of Sh. Binu Seth, qua his share therein, as per mandate of section 54(3) of MH Act.

13. For the above mentioned reasons, coupled with entire material on record, the petitioner herein not found entitled to claim any relief, qua this petition. Hence, the petition under discussion is found to be devoid of any merits and the same is hereby dismissed. In the given facts and circumstances of this case, parties herein to bear their own costs, qua this petition. Judicial file be consigned to Record Room as per rules, after necessary compliance.”

14. In my opinion, therefore, there is no merit in the appeal and the same has to be dismissed. I may note that the Mental Health Act, 1987 has been replaced with effect from 7.4.2017 by the Mental Healthcare Act, 2017, however, Section 126 of the Mental Healthcare

Act, 2017 as per its Sub-Section 2(f) provides that though the Mental Health Act, 1987 is repealed but any proceedings pending in any Court under the repealed Act of 1987 is to be continued as if the 2017 Act has not been passed. Therefore, this appeal will lie under Section 76 of the 1987 Act and the trial court was entitled to pass the judgment under the 1987 Act.

15. Dismissed. Parties are left to bear their own costs.

OCTOBER 27, 2017
godara/ak

VALMIKI J. MEHTA, J

भारतमेव जयते