

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2673 OF 2018

RAJKUMAR SHITALDAS NOTWANI
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Petitioner : Mr. R.P. Adgaonkar
h/f. Mr. M.G. Patil.
AGP for Respondent : Mr. S.K. Tambe.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13th March, 2018

PER COURT :

1. Leave to add the District Collector, Jalgaon, as respondent. Addition be carried out forthwith. Learned AGP causes an appearance on behalf of the added respondent.

2. The petitioner is aggrieved by the order dated 20/12/2017, passed by the learned District Judge-5, Jalgaon, in Civil Miscellaneous Application No. 255/2017. By the said order, the application filed by the petitioner under Section 53 of the Mental Health Act, 1987, seeking appointment of a guardian of his son who is a special child, has been rejected.

3. The learned AGP has placed on record the Gazette

of India part-2 – Section 1 published by the Government of India on 07/04/2017, pertaining to the new Mental Health Care Act, 2017. He points out that though the Hon'ble President of India has given his assent to the Mental Health Care Act, 2017 on 07/04/2017, the Central Government, while notifying the said assent and the Act in the National Gazette, has not specified a particular date on which the Act would come into force.

4. He, therefore, points out Section 1 (3), by which, after the period of nine months from the date of the assent of the Hon'ble President, this Act would automatically come into force. The contention of the petitioner is exactly on these lines.

5. I find that the above aspect was not brought to the notice of the learned Judge who has passed the impugned order. The litigating sides before the Trial Court, have not rendered assistance to the learned Judge by pointing out the above aspects. Had the Gazette of India been produced before the Trial Court, I am sure that the impugned order would not have been passed.

6. It is, therefore, obvious that nine months after 07/04/2017, the new Act would come into force. On the date of the filing of CMA No. 255/2017 which is 27/09/2017, the new Act was not brought into force and the earlier Mental Health Act, 1987 continued to be applicable.

7. Learned advocate for the petitioner has rightly pointed out Section 126 (2) (f) of the new Act which states that any proceeding pending in any Court under the Repelled Act, on the commencement of this Act, may be continued in that Court as if this Act has not been brought in effect.

8. In the light of the above, this petition is allowed. The impugned order dated 20/12/2017, is quashed and set aside. Civil Miscellaneous Application No. 255/2017 is restored to the file of the learned District Judge-5, Jalgaon.

9. The petitioner shall appear before the said authority on 07/04/2018. Formal notice need not be issued by the Court below. Needless to state, CMA No. 255/2017, would be decided on its own merits by the

Trial Court under the Mental Health Act, 1987, keeping in view Section 126 (1) (f) of the Mental Health Care Act, 2017.

(RAVINDRA V. GHUGE, J.)

S.P.C.