

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION (L) NO.371 OF 2018**

Samir Pyarali Firasta & anr.  
vs.

...Petitioners

Union of India & anr.

...Respondents

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Mr. Chetan Kapadia a/w. Guru Shanmugam and Rihal Kazi i/b.  
M&M Legal Ventures for the petitioners.

Mr. Y.R. Mishra a/w. N.R. Prajapati for respondent No.1-UOI.

Mr. Himanshu B. Takke for respondent No.2.

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**CORAM : SHANTANU KEMKAR &  
MAKARAND KARNIK, JJ.**

**DATE : APRIL 26, 2018**

**P.C.:**

Parties through their Counsel.

2. The petitioners have filed Minutes of Order. The same is taken on record and marked as '**X**' for identification.

3. We have considered the averments made in the petition and also considered the submissions made by learned Counsel for the petitioners. We have also interacted with both the petitioners. Having considered the submissions and the averments, the petition can be disposed of by passing following order :-

1. By filing this petition under Article 226 of the Constitution of India, the petitioner No.1 is seeking

direction in the nature of Mandamus declaring him as guardian of his wife Mrs. Anjali Samir Firasta.

2. According to petitioner No.1, his wife i.e. Ms. Anjali Samir Firasta is in comatose condition since September 2016. In support of averments made in the Petition, Petitioner No.1 has filed medical certificates of Dr.Roop Gursahani at P.D. Hinduja National Hospital and Medical Research Centre. The certificates unequivocally declare Petitioner No.1's wife to be in comatose condition and further state *“At that time, she was admitted to Hinduja Healthcare Surgical, Khar in a comatose state, with hypoxicischemic brain damage due to cardiac arrest and subsequent resuscitation. She is now in the Unresponsive Wakefulness Syndrome (previously termed Persistent Vegetative State). She needs continuous monitoring and 24-hour nursing care at home. This is to certify that due to her condition, she is unable to speak, sign or communicate in any manner whatsoever. Her current medical situation can now be considered permanent.”*

3. In order to ascertain the correctness of the averments made in the Petition, this Court on 22<sup>nd</sup> February, 2018 had directed the Sub-Divisional Magistrate, Mumbai to visit the place of residence of the Petitioner and his wife and submit a report in regard to the health condition of the Petitioner No. 1's wife. The Sub Divisional Magistrate has visited the residence of Petitioner No.1 on 1<sup>st</sup> March, 2018 and after examination of his wife, filed report dated 1<sup>st</sup> March, 2018 on 13<sup>th</sup> March, 2018 in this Court confirming the same.

4. Having gone through the medical reports as also the report of the Sub-Divisional Magistrate, Mumbai, we find ourselves in agreement with the averments made in the Petition and the medical certificate to the effect that Petitioner No.1's wife Mrs. Anjali Samir Firasta is in comatose condition.

5. We have also ordered impleadment of Petitioner No.2 i.e. mother of Petitioner No.1's wife by our order dated 13<sup>th</sup> March, 2018 and have in person heard Petitioner No.2, Mrs. Kaushalya Vishnu Jagtiani, mother

of the said Anjali as also Mr. Anil Vishnu Jagtiani, brother of the said Anjali on 19<sup>th</sup> April, 2018 in Chambers. Both of them expressed their consent and no objection to grant the reliefs claimed in the Petition in favour of Petitioner No.1.

6. Accordingly, we allow the Petition in terms of prayer Clause (a) and (b), which read as follows :

*“(a) That this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus declaring that the Petitioner No.1 Mr. Samir Pyarali Firasta be the Guardian of his wife Mrs. Anjali Samir Firasta, who is in Unresponsive Wakefulness Syndrome (previously termed Persistent Vegetative State) condition ;*

*(b) That this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus directing the Respondent Authorities, all the banks, Financial Institutions, Co-operative Housing Societies and Government Agencies to allow Petitioner No.1 Mr. Samir Firasta to operate and deal with all the affairs, finances and properties of the said Mrs. Anjali Samir Firasta as her legal guardian.”*

7. Considering the case and the condition of Mrs. Anjali Samir Firasta, her legal guardianship be

given to her husband Mr. Samir Pyarali Firasta to act, sign and execute on behalf of Mrs. Anjali Samir Firasta except for sale of any assets belonging to said Mrs. Anjali Samir Firasta. Any share or proportionate share of income derived from assets of Mrs. Anjali Samir Firasta can be deposited in joint account of Mrs. Anjali Samir Firasta and Mr. Samir Pyarali Firasta. In the event of need of sale of any asset belong to Mrs. Anjali Samir Firasta, Petitioner No.1 i.e. Mr. Samir Pyarali Firasta will be required to take prior permission from the Honourable Court before executing any such sale.

8. During the course of hearing, we were informed that Residential Apartment being Flat No.701, Sindhu Co-op. Hsg.Society Limited, situate at Plot No.33/C, 3<sup>rd</sup> Road, Khar (West), Mumbai – 400 052 is jointly held in the names of Mrs. Kaushalya Vishnu Jagtiani (Mrs. Anjali Samir Firasta's mother), Mr. Anil Vishnu Jagtiani (Mrs. Anjali Samir Firasta's brother), Anita Ahuja nee Anita Jagtiani Gandhi (Mrs. Anjali Samir Firasta's sister) and Mrs. Anjali Samir Firasta. This Residential Apartment is used and occupied by Mr.

Anil Vishnu Jagtiani and it has been agreed that the same has to vest in the name of Mr. Anil Vishnu Jagtiani. Mrs. Anjali Samir Firasta's legal guardian appointed herein namely Mr. Samir Pyarali Firasta may sign and execute such documents as may be required on behalf of Mrs. Anjali Samir Firasta to give effect to the arrangement agreed in that regard. The restriction on sale of Mrs. Anjali Samir Firasta's assets as stated in Clause No.7 above on the legal guardian appointed herein namely Mr. Samir Pyarali Firasta will not be applicable for the arrangement in this Clause No.8.

9. The Petition is disposed of as such.

10. The parties as also the concerned authorities, Banks and Government Agencies to act on the basis of authenticated/certified copy of this order.

**(MAKARAND KARNIK, J.)**

**(SHANTANU KEMKAR, J.)**