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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2851 OF 2018

Ali Muntazir Abbas Lehry and anr. .. Petitioners

Vs.

The Secretary, Department of Health
and Family Welfare, Mantralaya
and 3 others.

.. Respondents

.....

Mr. Arif Bookwala, Senior Counsel along with Ms. Ritu Shetty
I/by M/s. Hariani & Co. for the petitioners.

Mr. Sukanta Karmakar, AGP, State, for respondent Nos. 1 to 4.

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**CORAM : B.R.GAVAI &
M.S. KARNIK, JJ.**

DATE : 25th OCTOBER, 2018

P.C. :

Rule. Rule is made returnable forthwith.

2. Heard by consent of the parties.

3. The petitioners have approached this Court for
declaration to appoint petitioner No. 1 – Ali Muntazir Abbas
Lehry as guardian of his mother Smt. Shabnam Lehry.

4. As it was done by the Division Bench of this Court in Writ Petition No. 9712 of 2017, by the order dated 12th October, 2018 we had directed the Dean of Government Medical College, Mumbai to depute one Medical Officer to visit the petitioners' residence to find out as to whether the medical condition of Mrs. Shabnam Lehry is such that she is not in a position to do anything on her own.

5. Learned AGP has submitted a report dated 24th October, 2018 from the Grant Government Medical College & Sir J.J. Group of Hospitals, Mumbai. It is stated in the report that the team of Neurologist, Psychiatrist and Medical Officer from Grant Medical College and Sir J.J. Group of Hospitals, Mumbai, visited on 23rd October, 2018 to examine the patient.

The relevant part of the report which reads thus :-

“History was obtained from patient's daughter in law ; Mrs. Sajida Lehry. Patient is symptomatic from 2010 with history of insidious onset, gradually progressive language problem and communication problem followed by behavioral and personality changes, memory problems and since last 3-4 years also movement disorder in the form of progressive dystonia and akinetic-rigid syndrome. Her mother and

brother also had some memory and behavioral problems (suggestive of family history of cognitive impairment). At present patient Mrs. Lehry, petitioner's mother is mute, poorly attentive and non-communicative verbally as well as with gestures. Her details of higher mental functions and cognitive assessment not possible. She is rigid and having generalized dystonia (upper limbs more than lower limbs) and not able to stand and walk. She is unable to read and write also. She is dependent on her relatives for her activities of daily living.

She has been thoroughly investigated from 2010. Her detail neuropsychological evaluation done in 2003 and PET scan brain also done in 2013 suggestive of fronto-temporal type of dementia.

Overall her present status is suggestive of advanced dementia (cognitive impairment) with severe locomotor disability with probable diagnosis of Fronto-temporal dementia (primary progressive aphasia variant to start and spectrum of Taupathy disorder). She is dependent on her relatives for her activities of daily living and is unable to perform any activity on her own.”

6. Taking into consideration the medical report, it is clear that the petitioner No.1's mother is not in position to do anything on her own. The petitioner No.1's real brother and sons of said Smt. Shabnam Lehry have prayed for appointing the petitioner No.1 as guardian of Smt. Shabnam Lehry.

7. In that view of the matter, rule is made absolute by appointing the petitioner No.1 as guardian of his mother Smt. Shabnam Lehry.

8. Rule is also made absolute in terms of prayer Clauses (c) and (d). However, this shall be subject to condition that the petitioner No.1 file an undertaking to this Court that he will take due care of his mother Smt. Shabnam Lehry and look after all her needs including medical needs, etc. The said undertaking shall be filed within a period of one week from today.

9. Accordingly, the Writ Petition is disposed of.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)