

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

APPEAL FROM ORDER NO.17/2018

Smt. Radhika w/o Rajesh @ Abhay Undal ..vs.. Rajesh @ Abhay Shyamrao
s/o Kundlikrao Undal and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. K. B. Zinzarde, Advocate for appellant.

Mr. A. P. Tathod, Advocate for respondent no.2.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 27, 2018

1. Heard Mr. Zinzarde, learned counsel for the appellant and Mr. Tathod, learned counsel for respondent no.2. This Court had on 19.03.2018 issued notice on this appeal to the respondents. In pursuance to the service of notice, respondent no.2-Shyamrao Undal put in his appearance through his advocate. The record shows that the appellant was required to move the application under Order 5 Rule 20 of the Code of Civil Procedure to serve respondent no.1-Rajesh alias Abhay by paper publication. The said was allowed by this Court on 26.07.2018. In pursuance to that, notice of this appeal was published in widely circulated newspaper in the area *Deshonnati*, dated 07.08.2018. In spite of the said, nobody put his appearance for and on behalf of respondent no.1-Rajesh before this Court.

2. The appellant is before this Court against the order passed by learned District Judge-I, Washim dated 15.11.2017

below Exh.-5 in Misc. Civil Application No.60/2017, whereby the Court below has rejected the said application.

3. Without observing anything on merits or demerits of the matter, it is found by this Court that an application under Section 25 of Guardian and Wards Act, 1890 was filed by the appellant-Radhika before District Judge, Washim, which was registered as Misc. Civil Application No.60/2017. In the said application, an application under Section 25(2) of the Guardian and Wards Act, 1890 was filed. The said application was rejected on 15.11.2017. Perusal of the order shows that the Court below has not considered the scope of Section 25 (2) of the Guardian and Wards Act. Instead, he has decided the same as if it is an application under Section 97 of the Code of Criminal Procedure. Mr. Tathod, learned counsel for respondent no.2, submitted that the learned District Judge could exercise powers under Section 25 (2), only after passing of the final order.

4. Be that as it may. On the said ground, application is not rejected. Therefore, in my view, the order impugned cannot stand to the scrutiny of law. Application Exh.-5 in Misc. Civil Application No.60/2017 is required to be remanded for fresh consideration by District Judge for considering scope of Section 25 (2) of the Guardian and Wards Act. It would be always open for the respondents in the said application to make a submission regarding maintainability of the application under Section 25 (2) and it shall be open for the District Judge

to decide the said application on its own merits by giving appropriate notice to the respondents.

5. With this, the impugned order dated 15.11.2017 is hereby set aside. Application Exh.-5 in Misc. Civil Application No.60/2017 is restored to file.

Learned District Judge-1, Washim is directed to decide the application afresh, in accordance with law, as indicated in this order. Parties shall appear before the learned District Judge, on next date, which is already fixed by the Court. With this, the appeal is disposed of.

JUDGE

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**Yogesh
Arvind
Kahale**

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