

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

46 WRIT PETITION NO .9788 OF 2018

MEGHA MADAN NAYAK
VERSUS
MADAN RUSTUMRAO NAYAK

...
Advocate for Petitioner : Mr. V. S. Pawar
Advocate for Respondent : Mr. B. R. Kedar

CORAM : M. S. Karnik, J.

DATE : 5th August, 2019

PER COURT

At the out set, learned counsel for the respondent/husband invited my attention to an application made by petitioner-wife before the trial Court for recalling and setting aside the very same order which is impugned in this petition.

2. He invites my attention to page 31 of the petition. He submits that an application for setting aside the order impugned in this petition has already been made to the Trial Court. Faced with this difficulty, learned counsel for the petitioner submits that he would elect to withdraw the application which is at page No.31 of the petition and he would proceed with the present writ petition.

3. By filing an application below Exh.5A, the respondent-husband contended that considering the medical documents filed on record, it is necessary to appoint next friend of the petitioner-wife under Order 32 Rule 3, 15 read with Section 151 of Cr.P.C. It is his contention that petitioner is mentally disturbed i.e. schizophrenia chronic .

4. Learned counsel for the petitioner invited my attention to the impugned order dated 20.02.2016 and submits that when this application was heard, neither the petitioner nor her advocate could remain present. Learned counsel for the petitioner would submit that Order 32 Rule 15 of C.P.C. contemplates an enquiry to be made by the lower Court before an order could be passed. He would submit that no such enquiry has been made.

5. In view of the provisions of law, I find that the order is to be made after making enquiry. In fact, in the application made before the learned trial Court for setting aside the impugned

order which has now been withdrawn by the petitioner, in para 8, is stated thus :

"8. That, initially the matter is pending before Civil Judge Senior Division Shri Pawar Sir, later on the matter is transferred to Second Joint Civil Judge of which no notice was issued and served to respondent or her council because loss of date, the respondent could not file out the status and date of the matter. The matter remained unattended and advertantly."

6. In this view of the matter and having regard to the provisions of Order 32 Rule 15 of C.P.C., in my opinion, application (Exh.5) filed by the respondent-husband needs to be heard afresh. In the interest of justice an opportunity needs to be given to the wife to contest the application made by the husband.

7. In the interest of justice, the no say order is set aside.

The petitioner- wife to file the say to the said application below Exh-5A within a period of two weeks from today. The impugned order is set aside.

8. The learned trial Judge is directed to decide the application (Exh-5A) on its own merit and in accordance with law expeditiously, preferably within a period of six weeks from the date of filing of say.

9. Writ petition is allowed in the above term with no order as to costs.

(M. S. Karnik, J.)

vsm/