

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.366 OF 2017

Dynacraft Machine Co. Ltd. Appellant

Vs.

Vinod Shenoy Respondent

Mr. Navroz Seervai, Senior Advocate with Prateek Seksaria, Saket Mone, Suneet Tyagi, Ms. Jayashree Ramchandran, Sandeep Patil, Vishesh Kalra, Vishal Dushing I/b. M/s. Vidhi Partners for the Appellant.

Mr. Kunal Bhanage a/w. Raghavan Sarathy, Akhil Sarathy, Indrajeet Suryawanshi, Nikhil Waje, Ms. Modini M. and Ms. Apurva S. I/b. Thodur Law Associates for the Respondent.

CORAM: K.K.TATED, J.
DATED : NOVEMBER 19, 2019

JUDGMENT :

1 Heard. By consent of both the parties and as per order dated 12.07.2019, the matter is taken on board for final hearing. The Registry has called R & P, which is duly received.

2 By this First Appeal the Appellant is challenging the oral order dated 10.04.2015 passed by the Bombay City Civil Court at Mumbai in Mental Health Petition No.4/2015 (hereinafter referred to as the “said petition”) in the matter of appointment of guardian u/s.53 of the Mental Health Act 1987 (hereinafter referred to as the said Act) allowing the application filed by the Respondent – original Petitioner and appointed him as a guardian of Ms.Jessica Iqbal Lukmani

(Jessica Shenoy) (hereinafter referred to as Ms.Jessica) to take care of her, under the provisions of the said Act.

3 The First Appeal is filed by the Appellant - third party being aggrieved by the impugned order dated 10.04.2015.

4 The Appellant had filed Civil Application No.1042/2017 for leave to appeal against the impugned order which was allowed by this court by order dated 13.04.2017.

5 The Appellant had also filed Civil Application No.1297/2017 for an order of stay to the effect, operation and implementation of the impugned order which was allowed by this court by order dated 13.04.2017 part of which reads thus:

“6. In the premises, the civil application is allowed in terms of prayer clause (c), subject to the right of the Respondent to intervene and appear as a claimant or as a purported constituted attorney of Jessica Lukmani before the NCLT in the pending company petition, without prejudice to his right in the present appeal, or otherwise generally, that is to say, in all cases other than the pending company petition, to claim as a legal guardian of Jessica Lukmani. The civil application is disposed of in the above terms.

7 In the meantime, the parties, including NCLT, to act on the authenticated copy of this order. Needless to add that these observations made by the court are for the purpose of deciding the three civil applications and considering the admission of the first appeal and these observations shall not influence the NCLT whilst determining the company petition.

8 First Appeal (Stamp) No.9457/2017 shall be tagged along with First Appeal No.243/2017. The Appellant to remove all office objections and get the first appeal numbered within two weeks from today.

9 Certified copy expedited.”

Few facts of the matter are, as under:

6 The Respondent – son of Jessica Iqbal Lukmani, filed the petition for appointing him as a guardian of his mother u/s.53 of the said Act, before the Bombay City Civil Court at Mumbai on the ground that her mother, since 1995, was showing signs of mental incapacity diagnosed as impaired cognitive functioning indicating neuro-degeneration of the brain suggestive of the disease known as Advanced Dementia most like Alzheimer’s disease. In support of this contention, the Respondent has placed on record before the Trial Court the certificate dated 23.02.2015 issued by the Grant Medical College and Sir J.J.Group of Hospitals, Mumbai. The Respondent also placed on record other documents. In support of his contention, the Respondent has specifically stated in the said petition, that it is necessary in the interest of justice to declare and appoint the Petitioner as a guardian in respect of the person and properties of Ms.Jessica. Some of the relevant paragraphs 3, 4, 5, 14, 21, 30 of the said petition are as under:

“3. The Petitioner states that Mrs.Jessica Lukmani (hereinafter for the sake of brevity be referred to as the said "Mother - Mrs.Jessica")

has soon thereafter from the year 1995 shown signs of mental incapacity diagnosed as impaired cognitive functioning with significant impairment in memory and executive functioning indicating neuro-degeneration of the brain suggestive of the disease known as Advanced Dementia most like Alzheimer's disease. The Petitioner 'states that the disease was treated initially by the General Physicians and thereafter by Dr.R.N. Jerajani, the consulting psychiatrist and Dr.Arun B. Shah, Neurologist who referred to Vaishali Ganwir, Clinical Neuro Psychologist at Mumbai. The Petitioner states that Dr.R.N.Jerajani also referred the case to J.J. Group of Hospitals where she is undergoing medical examination. Hereto annexed and marked as Exhibit "E" is the copy of the neuropsychology report by Vaishali Ganwir clinical Neuropsychologist dated 13.09.2014."

"4. The Petitioner states that as a result of the said mental condition, she has done such acts which run contrary to her own interest apart from filing absurd complaints against various persons including the Building Society office bearers where she resides; a case in point is a letter dated 1 September 2012 addressed to the Dy.Chairman of the Society by the said Jessica making in cohesive charges against him, a copy whereof is annexed hereto and marked as Exhilbit "F"; the petitioner craves leave to refer to and rely upon such other documents as and when produced."

"5 The Petitioner states that initially some improvement has been seen, however, later on she did not start to respond to the medicine and now the disease has reached an advanced stage. The Petitioner states that considering the nature of the disease, it is pertinent to note that she requires the attendance of a single person 24 hours a day. It is pertinent to note that the nature of the disease is such that she has lost her memory, she has lost her whereabouts and is unable to reply like an ordinary prudent citizen. The

Petitioner states that she is unable to do her own acts by herself but requires the help of additional persons to comply the requisition of the acts she requires to do (hereinafter for the sake of brevity be referred to as 'the said disease'). Hence, the Petitioner being the son of the said Mrs. Jessica Iqbal Lukmani through the earlier marriage, is presenting this Petition for his appointment as Guardian for her and her assets."

"14 The Petitioner states further that the directors of Kalpataru Group have by manipulating the said Jessica caused to transfer the entire portion of the shares held by the said Jessica in Dynacraft Machine Company Limited, a company promoted by the Late husband of the said Jessica by taking undue advantage of the mental health of the said Jessica and that the Petitioner has also filed appropriate proceedings before the Hon'ble Company Law Board, Bombay Bench, being Company Petition No.19 of 2014 for oppression and mismanagement. The Petitioner craves leave to refer to and rely upon the said proceedings as and when produced."

"21. The Petitioner states that from the year 1993, the Petitioner has been spending monies from his own resources and also the sister in law of said Mrs. Jessica Lukmani, Yasmin Mamoon Lukmani, aged 70 years to the retired professor has also been supporting the Petitioner in incurring various expenses towards maintenance and health care and on basic necessities to the said Mrs. Jessica Lukmani. A statement showing the normal expenses incurred on the said Jessica and her properties is annexed hereto and marked Exhibit "M"

"30. The Petitioner states that the said mother Jessica is suffering from Alzheimer's type of Dementia. The said mother Jessica is widowed on 02.04.1993 and is residing at the above address and the Petitioner is looking after her since 1995."

7 The Trial Court on the basis of the certificate issued by the J.J.Hospital, decree of divorce of Ms. Jessica, marriage

certificate of Ms. Jessica with Mr. Iqbal Lukmani, medical report, public notice issued by Ms. Jessica Lukmani about being legal owner of the immovable property, General Power of Attorney and other documents on record and paper publication, the Trial Court passed the impugned order dated 10.04.2015. Operative part of the impugned order reads thus:

“ORDER

“1. Mental Health Petition No.4/15 is hereby allowed.

2. The Petitioner Vinod Shenoy being son of mentally ill person Jessica Iqbal Lukmani (Jessica Shenoy), is appointed as a guardian of mentally ill person, Jessica Iqbal Lukmani (Jessica Shenoy) to take care of her, under provision of Mental Health Act.

3. The petitioner abovenamed is appointed as a manager and allowed to look after the affairs and management of the person and properties of mentally ill person Jessica Iqbal Lukmani (Jessica Shenoy), described in the Schedule of Properties at Page 33 of this petition, without any remuneration.

4 The petitioner shall not dispose of or sell the moveable or immovable property of the mentally ill person, without prior permission of the Court.

5 Accordingly Mental Health Petition No.4/2015 stands disposed of.”

8 On the basis of the impugned order, the Respondent filed an application before the NCLT and at that time, the Appellant learnt that the Trial Court passed the impugned order in favour of the Respondent declaring him as a guardian of Ms. Jessica. Hence, they preferred the Civil

Application for leave to prefer an appeal and also an application for condonation of delay, which was allowed by this court. Hence, the First Appeal.

9 Mr. Navroz Seervai, the learned senior counsel for the Appellant submits that the impugned order passed by the Trial Court is liable to be set aside on the ground that, same was passed by the court below, without following due process of law as required by the said Act. He submits that it is specifically stated in the said Act, that before issuing a guardian certificate, the court has to follow the procedure prescribed in Chapter-VI and particularly section 50, 51, 52, 53, 54, 55, 56, 57 of the said Act. He submits that in the present proceedings the Trial Court, without following the procedure as required by the said Act, passed the oral order and hence same is liable to be set aside. He submits that the impugned order is contrary to the mandatory provisions of the said Act and is liable to be set aside. He submits that on the face of record, there are violations of the following provisions of law.

a. The Ld. Trial Court while passing the impugned order has given a complete go-by to the provisions of Chapter VI of the said Act, which prescribes a mandatory procedure to be followed before adjudicating a person as mentally ill and appointing a guardian as well as a manager to secure the property and estate of the mentally ill person.

b. Trial Court while passing the impugned order has failed to consider the provisions of section 50(2) of the said Act. This Section provides that the Court has to examine the person who is allegedly mentally ill. The Section further mandates that in the event, the alleged mentally ill person is a woman, a

commission may be set up as per the provisions of Code of Civil Procedure, 1908, to investigate into the mental-health of the person/woman. Under section 50(3) of the said Act, a notice to produce the mentally ill person under section 50(2) shall be served upon the Applicant and upon any relative of the alleged mentally ill person or other person who in the opinion of the Court, shall have notice of judicial inquisition to be held by it. Under section 50(4) of the said Act, for the purpose of inquisition the Court may appoint two or more persons to act as assessors. However, none of the above provisions of the Mental Health Act were complied with by the Ld. Trial Court.

c Therefore, the mandate of the said Section is to enquire in a manner to the satisfaction of the Ld. Court independently of the mental-health of the alleged mentally ill person. In the present case, the impugned order is passed without such assessment/enquiry which is mandatory under Section 50. The Ld. Trial Court, without conducting such assessment/enquiry by appointing assessors ought not to have taken the bare statements and the documents produced by the Respondent to be gospel truth and adjudged Mrs. Jessica Lukmani as mentally ill.

d That as per Section 51, the Ld. Trial Court after following the procedure as laid down in Section 50 of the said Act shall record its findings in two parts, namely:

*i Whether the person is mentally ill or not?
and*

ii. Where the person is mentally ill, whether he is incapable of taking care of himself and managing his property or incapable of managing his property only?

The Ld. Trial Court under the said Act ought to given a finding in unambiguous terms, whether the said Ms.Jessica was in fact mentally ill or not, and whether she was incapable of taking

care of herself and her property or only incapable of managing her property. The Ld. Trial Court in the present case has in fact not given any such findings as mandated under Section 51 of the said Act and on that pretext itself the impugned order is bad in law and liable to be set aside.

e. That the Ld. Trial Court while passing the impugned order, failed to follow the provisions of section 52 of the said Act. Section 52(1) of the said Act mandates that after the Ld. Trial Court makes a finding, which can be based only on section 51 and 52 of the said Act, the Ld. Trial Court shall thereafter make appropriate orders for the appointment of "any suitable person" under Section 53 of the said Act to take care of the person. On the plain reading of the provisions of the said Act, a finding under Section 52, can only be made once reasoned findings are made by the Ld. Trial Court under Section 51 of the said Act

f. In the present case, the Ld. Trial Court having failed to consider and follow the mandatory provisions of Sections 50 and 51 of said Act, could not have proceeded to appoint a Guardian and Manager under section 53 of the said Act.

g. Respondent could hardly be said to be a suitable person, particularly when the said Ms.Jessica had repeatedly filed Police Complaints of serious offences, that is, harassment, misusing the Power of Attorney, forging and stealing various property documents and legal proceedings. Therefore, the Ld. Trial Court has caused grave injustice to the said Ms.Jessica by appointing the Respondent as her guardian who is having criminal antecedents.

h. That the Ld. Trial Court while passing the impugned order, appointing the Respondent as

the Guardian and Manager of the said Ms. Jessica, did not direct the Respondent to enter into any bond or surety to protect the estate of the said Ms. Jessica. as laid down under Section 56 of the Act.

i. In fact, the Ld. Trial Court failed to even record reasons as to why no surety or bond needs to be entered into by the Respondent. It is pertinent to point out that under the provisions of Section 56 of the said Act, every person who is appointed as a manager of the property may be directed to enter into a bond or put a surety to protect the estate of the said mentally ill person.

j. That the Ld. Trial Court while passing the impugned order, has completely failed to consider the requirements of Section 57 of the said Act, which states that no person who is a legal heir, shall be appointed under section 50, 53, 54 and 55 of the said Act, to be the Guardian and/or Manager of the property of the mentally ill person. A legal heir may only be appointed as the guardian and/or manager of the mentally ill person for the reasons to be recorded in writing.

k. In the present case, no reasons are recorded for appointing the Respondent as the Guardian and Manager of said Ms. Jessica, particularly stating that such appointment is for the benefit for the mentally ill person as mandated under Section 57 of the Act. It is pertinent to point out that, had the reasons been recorded and proper procedure followed to appoint a Manager and Guardian of the said Ms. Jessica, the Ld. Trial Court, before appointing the Respondent as the guardian of the said Ms. Jessica, ought to have also recorded the disputes between the Respondent and the said Ms. Jessica. Hence the Ld. Trial Court has committed patent illegality of Section 57 of the Act and hence the Impugned Order ought to be

set aside.

10 The learned senior counsel for the Appellant submits that the impugned order is completely illegal and contrary to the provisions of the said Act. He submits that the impugned order is erroneously passed by the Trial Court without even verifying the pleadings, evidence adduced and the facts on record, without conducting any enquiry and only on the basis of the documents filed by the Respondent and the averments made in the said petition.

11 The learned senior counsel for the Appellant submits that it is specifically stated in section 50 of the said Act that, the court has to make detail enquiry into the mental condition of the said person, if the application is filed by the relative or other person interested in that matter. He submits that as per section 50(2) of the said Act, the court ought to have issued personal service on Ms.Jessica and directed her to remain present to find out her mental condition. He submits that in the present proceedings the Trial Court has failed to issue any notice to Ms.Jessica, required u/s.50(2) of the said Act. On this ground also, the impugned order is liable to be set aside.

12 The learned senior counsel for the Appellant submits that bare reading of the impugned order dated 10.04.2015 shows that the Trial Court has failed to conduct any enquiry and/or give any finding as required u/s.51 of the said Act. He submits that the Trial Court has passed the impugned order only on the basis of the medical certificate issued by

the J.J.Hospital, decree of divorce of Ms.Jessica, marriage certificate with Mr.Iqbal Shennoy, medical report, public notice issued by Ms.Jessica about being legal owner of the immovable property and General Power of Attorney holding that the Respondent has made out a case for allowing the application for appointment of a guardian u/s.53 of the said Act. Hence, the impugned order is liable to be set aside even on the ground that the Trial Court has failed to comply with the provisions of section 53 of the said Act.

13 The learned senior counsel for the Appellant submits that the Trial Court has erred in coming to the conclusion that the Respondent being a son of Ms. Jessica, can be appointed as a guardian and manager u/s.53 of the said Act. He submits that as per section 57 of the said Act of 1987, no person, who is the legal heir of a mentally ill person, shall be appointed under sections 53, 54, or 55 to be the guardian of such mentally ill person or as the case may be, the manager of his property unless the District Court or the case may be, the Collector, for reasons to be recorded in writing, considers that such appointment is for the benefit of the mentally ill person. He submits that bare reading of the impugned order clearly shows that the Trial Court has failed to consider the provisions of section 57 of the said Act at the time of appointing the Respondent as a guardian and manager of Ms.Jessica. He submits that the Trial Court has failed to give single reason for appointing the Respondent as a guardian of Ms.Jessica being a son. Hence, the said order is liable to be set aside on this ground also.

14 The learned senior counsel for the Appellant submits that following dates and events are important in the matter to see the manner in which the Respondent has filed an application for appointment of a guardian u/s.53 of the said Act before the Bombay City Civil Court on 02.02.2015.:

a. 21.05.2013 -

Jessica executed the Will in favour of the Respondent Vinod Shennoy. In the said Will Ms.Jessica placed on record a certificate dated 18.05.2013 duly issued by Dr.V.M.Kelkar stating that Ms.Jessica aged 77 years is in sound, physical and mental health on clinical examination.

b. 31.05.2013 - 11.07.2013, 18.07.2013 -

Power of Attorney executed by Ms.Jessica authorizing the Respondent Vinod to act on her behalf for management of her properties, investment, bank accounts etc.

c. 15.01.2015 -

Ms.Jessica filed S.C.Suit No.286/2015 before the Bombay City Civil Court at Mumbai for cancellation of power of attorney, Will etc. documents executed in favour of the Respondent. In that suit the said Jessica claimed following reliefs:

“a. That this Hon'ble Court by its judgment, order and decree be please to declare that the said documents Exhibits "H" to "K" hereto is duly cancelled, revoked and terminated, withdrawn and declare as illegal, unlawful, null and void and not binding upon or enforceable against the Plaintiff and the Defendant has no right to act and represent the Plaintiff on the basis thereof.”

“b. That this Hon'ble Court be pleased to pass Mandatory Order and direction and direct the Defendant to forthwith vacate the Suit Premises viz: Flat No. 212- B in Jolly Maker Apartment No. I i.e. Jolly Maker I Premises Cooperative Society Ltd., 95-97 Cuffe Parade, Colaba,

Mumbai 400005.”

“c. That this Hon'ble Court be pleased to pass Mandatory Order and direction to direct the Defendant to forthwith deposit the Originals of the said documents Exhibit "G" to "K" hereto in this Hon'ble Court for its cancellation and revocation and further be pleased to direct the concerned Registrar to record the cancellation and revocation in its record under section 31 of the Specific Relief Act.”

“d. That this Hon'ble Court be pleased to pass Permanent Order and Injunction restraining the Defendant, from dispossessing, disturbing, interfering or obstructing the Plaintiff's peaceful use, occupation and possession in the Suit premises in any manner whatsoever and/ or entering upon and/ or remaining in the Suit premises viz: Flat No. 212- B in Jolly Maker Apartment No. I i.e. Jolly Maker I Premises Cooperative Society Ltd., 95-97 Caffe Parade, Colaba, Mumbai 400005.”

“e. That this Hon'ble Court be pleased to grant Permanent Order and Injunction to restrain the Defendant from acting and or representing the Plaintiff or executing any document by and under or using the said documents Power of Attorneys Exhibit "G" to "K" hereto including the said Power of Attorneys and / or operating the Bank Accounts being Account No. 002-666774-006 in HSBC Bank Fort Branch and SB Account No.692010011141 in ING Vysya Bank Cuffe Parade Branch of the Plaintiff in any manner, whatever.”

“f. That pending the hearing and final disposal of this Suit, this Hon'ble Court may be pleased to pass an Order and direction to direct the Defendant to forthwith vacate the Suit Premises.”

“g. That pending the hearing and final disposal of this Suit, this Hon'ble Court may be pleased to pass Order and direction to direct the Defendant to forthwith deposit the Originals of the said documents Exhibit "G" to "K" hereto in this Hon'ble Court for its cancellation and revocation.”

“h. That pending the hearing and final disposal of this Suit, this Hon'ble Court may be pleased to pass Temporary Order and Injunction to restrain the Defendant, from dispossessing, disturbing, interfering or obstructing the Plaintiffs peaceful use, occupation and possession in the Suit premises in any manner whatsoever and/ or entering upon and/ or remaining in the Suit premises viz: Flat No. 212-B in Jolly Maker Apartment No.I ie. Jolly Maker I Premises Cooperative Society Ltd., 95-97 Cuffe Parade, Colaba, Mumbai 400005 or any part thereof.”

“i. That pending the hearing and final disposal of this Suit, this Hon'ble Court may be pleased to pass Temporary Order and Injunction to restrain the Defendant from using the said documents Exhibit "G" to "K" hereto including the said Power of Attorneys and / or operating the Bank Accounts being Account No. 002-666774-006 in HSBC Bank Fort Branch and SB Account No. 692010011141 in ING Vysya Bank Cuffe Parade Branch of the Plaintiff in any manner, whatever.”

“j. For ad-interim relief in terms of prayer clauses "f, "g" and "h" above may be granted.”

“k. Cost of the Suit be provided for,”

02.02.2015 -

Ms.Jessica filed affidavit dated 02.02.2015 before the Company Law Board Mumbai in Company Petition No.19/2014 stating that the Respondent

committed fraud on her. Para 1 to 4 of the said Affidavit read thus;

"I, Mrs. Jessica Iqpal Lukmani, being the Petitioner abovenamed, aged 79 years, residing at 212-B, Jolly Maker - I, Cuffe Parade Mumbai - 400 005, do hereby solemnly affirm and state as under:

through my constituted attorney, Mr. Vinod Shenoy. I say that I am aware of the facts in the matter in my personal capacity and am filing this present Affidavit for placing on record before the Hon'ble Board true and correct facts in the matter. I reserve my right to file further affidavit(s) along with the necessary documents as and when necessary and/ or advised.

2. At the outset, I state that I am of sound mind and repeat and confirm all that is stated by Respondent Nos. 1 to 3 and Respondent Nos. 6 and 8 to 18 in their respective Affidavits in Reply to the Company Petition. I repeat and confirm all that is stated by Respondent Nos. 1 to 3 in the Company Application filed by them seeking dismissal of the captioned Company Petition.

3. I say that the captioned Company Petition has been filed by my son, Mr. Vinod Shenoy acting as my constituted attorney, by and under a General Power of Attorney dated 31st May, 2013, (hereinafter referred to as "the POA") which had been executed by me in his favour and is annexed to the captioned Company Petition. Under the POA, Mr. Vinod Shenoy was authorized to execute or perform certain acts on my behalf, with regard to my properties, investments, trusts, banks accounts more particularly specified in the POA.

4 I say that the captioned Company Petition is a false, bogus and frivolous Petition filed by Mr. Vinod Shenoy purporting to act on my

behalf, and the captioned Petition without my knowledge and/or authorization and all the averments, contentions, submissions contained therein are not maintainable in light of the fact that I am neither a shareholder nor have sold my entire shareholding in the Respondent No. 1 Company to Respondent Nos. 2, for a valuable consideration, which has been admittedly received by me.”

02.02.2015-

Ms.Jessica filed complaint through her advocate with Senior Inspector of Police, Cuff Parade Police Station against the Respondent Vinod Shennoy in respect of several offences committed by him against her and other consequential action and requested to lodge FIR against the Respondent.

02.02.2015-

Respondent filed Mental Health petition No.4/2015 before the Bombay City Civil Court at Bombay.

06.02.2015 -

Ms.Jessica secured ad-interim relief against the Respondent in Suit No.286/2015 restraining him from using the documents being Power of Attorney, Will and purported MOU for creating right, title and interest in her property.

21.02.2015-

Ms. Jessica filed affidavit dated 21.02.2015 in S.C.Suit No.286/2015 for withdrawal of the said suit. On that day Ms.Jessica tendered affidavit as party in person because her advocate was absent. Roznama dated 21.02.2015 reads thus:

*“Coram : HIS HONOUR JUDGE SHRI S.P.DESHMUKH
By praecipe.
Plff present. Adv. for Plff. absent.*

Adv.Ms.Trupti Naik for Deft. present.

The matter is taken before the court by praecipe of Plaintiff. The Plff. has submitted affidavit cum application for withdrawal of suit.

The Plff has submitted one more application i.e. Affidavit of Service of Sameer Shaikh the Secretary of the Plaintiff. Copy of this application given to advocate of the Defendant.

Plffs Adv. is absent, so matter arranged on given date 13.03.2015 for order.”

“13.03.2015 - Trial Court passed following order:

Adv. Mr. R.S.Mishra for Plff present.

Adv. Ms. Trupti Naik for Deft. present.

Plff. Ms. Jessica Iqbal Lukmani submitted affidavit cum application to the court on 21.02.2015 through her advocate.

Adv.Mr.Mishra submitted that he is not aware about any instructions of the application Exh

The Adv. of Deft. having no objection if application is considered. In the given situation, the suit stands dismissed for default for the Plaintiff”.

15 The learned senior counsel for the Appellant submits that bare reading of dates and events itself shows that earlier said Ms.Jessica filed suit No.286/2015 in the Bombay City Civil Court at Mumbai on 15.01.2015 for cancellation of power of attorney, Will and purported undertaking which was executed in favour of the Respondent. Copy of the plaint shows that same was duly affirmed by Ms.Jessica. This itself shows that on the date of filing the suit she was normal. Moreover, when she filed the police complaint on 02.02.2015 that time also she was normal and good health. In spite of all these facts, the Respondent filed said petition in the Bombay City Civil Court at Mumbai for declaration that Ms.Jessica was mentally ill person. Without examining Ms.Jessica and/or examining

any witness from J.J.Hospital, the Trial Court has blindly accepted the statement made by the Respondent in his petition and allowed the petition filed by the Respondent. He submits that when Ms.Jessica was alright on 02.02.2015 at the time of filing the suit, how and on what ground the Trial Court allowed the Respondent's petition.

16 The learned senior counsel for the Appellant submits that, this court in the matter of Mrs.Rofina Jeronimo Pinto by judgment dated 08.08.2011 (Coram : A. S. Oka,J., as he then was) held that if the procedure prescribed under the said Act is not complied with, then the said order is liable to be set aside. In the said judgment this court had specifically held that, whether the Applicant produces mental health certificate of alleged mentally ill person or not, it is a duty of the District court to record findings on all points on its own. This court also held that it is necessary to issue notice to the alleged mentally ill person to remain present before the court so that the court can observe and give its finding. Paragraph 8 and 9 of the said judgment reads thus:

"8. The Section 51 of the said Act reads thus:

"Issues on which finding should be given by District Court after inquisition

51. Issues on which finding should be given by District Court after inquisition.—On completion of the inquisition, the District Court shall record its findings on,—

(i) whether the alleged mentally ill person is in fact mentally ill or not, and

(ii) where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.”

An application under Section 50 is not an ordinary lis between the parties. Whether the applicant produces the medical certificate on mental health of the alleged mentally ill person or not, it is the duty of the alleged District Court to record findings on the aforesaid two points. Therefore, it is important that the presence of the alleged mentally ill person is procured either before the District Court or at such other place as the District Court may determine. The District Court in proceedings under the said Act can invoke all the powers of Civil Court to procure the personal presence of the alleged mentally ill person. After procuring the presence of the said Leon in the Court, the learned Judge could have conducted the examination contemplated by Sub Section 2 of section 50. The trial Court could have always called upon the said Leon attached to get himself examined by a Psychiatrist attached to any Government or Municipal Hospital in the city. In the alternative, the trial Court could have called upon the said Leon to attend before the said Psychiatrist for examination. For procuring the presence of mentally ill person, the trial Court could have always taken the assistance of various statutory authorities.”

“9 The trial Court has relied upon the statement made by the alleged employer of the said Leon. The duty of the District Court imposed by sub section 2 of section 50 was to ensure that the examination of the alleged mentally ill person is made either by the Court or any other person appointed by the Court. The Court was under an obligation to hold inquisition and under sub section 4 of section 50, there was power in the Court to appoint two or more experts as assessors. Perhaps, the City Civil Court has treated the petition filed by the appellant as a lis between the appellant and the intervenor. Instead of performing its duty under sub section 2 of section 50, the Trial Court erroneously directed the appellant to get the said

Leon examined by a Psychiatrist and to produce a report. The said approach of the Court was completely erroneous and inconsistent with the duty imposed by Sections 50 and 51.”

17 The learned counsel for the Applicant submits that in the case in hand, the Trial Court failed to comply with these facts. Not a single document is on record to show that, the Trial Court issued notice to the alleged mentally health person, to remain present before the court. Not only that there is no observation in the impugned order that the Trial Court has observed and examined said Ms.Jessica for allowing the said petition.

18 The learned senior counsel for the Appellant also relied on the judgment dated **21.04.2009 passed by the Patna High Court in M.A.No.209/2009 in Ambika Sharma @ Ambika Singh** holding that the court has to call the alleged mentally ill person and observe and to give findings thereon. The Patna High Court also held that only on production of medical certificate the court cannot decide the matter under the said Act. He relied on the following observations of the said judgment:

“In the opinion of this Court neither the aforementioned medical certificate nor lame plea of the daughter appellant describing her father to be mentally ill person by itself can be a proof of mental illness. The power under section 50 has to be exercised by the court and if the court after issuing notice and securing personal appearance has recorded the statement which has not been controverted by the appellant, it cannot be said that such person like the respondent can be held to be mentally ill. In this context the following statement of the respondent recorded by the court including the court question

would leave nothing for speculation that the respondent was a normal person and the allegation made against him of being imentally ill person thus incapabale of looking after himself or his properties by the daughter appellant was itself incorrect.”

19 The learned senior counsel for the Appellant also relied on the judgment of the Delhi High Court in the matter of ***Bhagwan Vs. State & Ors. in FAO 328/2015 and C.M. Application No.45044/2016 dated 13.02.2017.*** He submits that the Delhi High Court has specifically held in this authority that it is a duty of the Trial Court to hold judicial inquisition regarding alleged mentally ill persons possessing property and its management. It is also held by the Delhi High Court that the Trial Court has to comply with the provisions of the section 50 of the said Act. If it is not complied with, the order is liable to be set aside. In support of his contention, he relies on para 3, 17 and 19 which read thus:

“3. The petition was taken up for consideration on 16th May, 2013, the Trial Court examined respondent no.7 who was unable to answer any question. Respondent No.7 was not in a position to even respond to the questions. The relevant portion of the statement of respondent No.7 recorded by the Trial Court is reproduced hereunder:

"Examination of mentally ill person/Mukesh s/o Late Sh.

*Narayan Singh & Late Smt. Dhanno Devi
(u/s Section 50 of Mental Health Act)*

- Q. What is your name? (no answer)*
- Q. Who is the petitioner? (no answer)*
- Q. Where do you live? (no answer)*
- Q. With whom you came here? (no answer)*

- Q. What is your age? (no answer)
- Q. How many brothers and sisters you have?
(no answer)
- Q. Whether your parents are alive? (no answer)
- Q. Have you ever gone to hospital or doctor? (no answer)
- Q. Have you ever gone to school? (no answer)

During the examination the mentally ill person could not answer any questions but was not even in a position to respond to the question asked to him. Petitioner who is stated to the elder brother of the mentally ill person stated that by birth he is in this condition and was treated by Safdarjung Hospital and he is having severe degree (sic) of Mental Retardation and disability certificate was issued by the Safdarjung Hospital and same has also been filed alongwith with the petition."

"17. Chapter VI deals with the judicial inquisition regarding alleged mentally ill persons possessing property and its management. Inquisition means "the act of inquiring deeply or searchingly; investigation". Inquisition qua the Mental Health Act is a judicial proceeding under the Act in which District Court makes an inquiry into the mental condition of the person alleged to be mentally ill who possesses property and gives its finding on the mental condition on the factum that whether the alleged person is in fact mentally ill or not, and where such person is mentally ill, then, whether he is incapable of taking care of himself and managing his property or not."

"19. On receipt of an application under Section 50(1), the District Court is required to serve the notice on the alleged mentally ill person or on the person having custody of the alleged mentally ill person for appearance and examination. The Court is also empowered to issue notice to be served on any relative or other person of alleged mentally ill person who, in the opinion of Court should have notice of judicial inquisition [Section 50 (3)]. The Court is also empowered to appoint two or more persons to act as assessors. The District Court, upon completion of inquisition, is required to record its finding regarding

factum of the alleged person being mentally ill and whether such mentally ill person is incapable of taking care of himself and of managing his property [Section 51]. Section 52 to 54 contain provisions for appointment of guardian of the mentally ill person and manager of his property. The duties of the guardian and the manager and the power of the Court to allow the manager to sell the property of the mentally ill person are given in various Sections of Chapter VI more particularly under Section 59 and 61.

Proceedings under Chapter VI of the Mental Health Act are in the nature of an inquiry.”

20 The learned senior counsel for the Appellant submits that considering the judgment of the Delhi High Court it is crystal clear that the impugned order passed by the Trial Court is liable to be set aside for non following the procedure provided under chapter VI of the said Act.

21 The learned senior counsel for the Appellant submits that bare reading of the said petition clearly shows that though the Respondent has specifically claimed the relief against the Appellant, he has failed and neglected to issue any notice to the appellant. In support of his contention, he relies on para 14 of the said petition which reads thus:

“14. The Petitioner states further that the directors of Kalpataru Group have by manipulating the said Jessica caused to transfer the entire portion of the shares held by the said Jessica in Dynacraft Machine Company Limited, a company promoted by the Late husband of the said Jessica by taking undue advantage of the mental health of the said Jessica and that the Petitioner has also filed appropriate proceedings before the Hon’ble Company Law Board, Bombay Bench, being Company Petition No.19 of 2014 for oppression and mismanagement. The Petitioner craves leave to refer to and rely upon the said

proceedings as and when produced.”

22 On the basis of this submission and the law declared by the High Court, as the Trial Court has failed and neglected to comply with the mandatory provisions under Chapter VI of the said Act, the impugned order is liable to be set aside. He submits that during pendency of the present proceedings Ms. Jessica died on 28.08.2019.

23 On the other hand the learned counsel for the Respondent has vehemently opposed the First Appeal. He submits that the First Appeal as it is filed by the Appellant is not maintainable. He submits that, the Appellant has failed to exhaust the alternate remedy under section 65 and 69 of the said Act. He submits that it is well settled position in law that, when a statute provides the manner in which the claim is to be enforced or relief is to be sought, it has to be strictly followed in the said manner. In support of his contention, he relies on the judgment of the apex court in the matter of *Union of India & Anr. Vs. Guwahati Carbon Ltd. (2012) 11 SCC 651* and in the matter of *Thansingh Nathmal & Ors. Vs. Superintendent of Taxes, Dhubri & Ors. (1964) 6 SCR 654*.

24 The learned counsel for the Respondent submits that the First Appeal is not filed by the Official Liquidator as required u/s.457(1)(a) of the Companies Act 1956. He submits that in the present proceedings the Official Liquidator is already appointed for the Appellant. Hence, the appeal as it is filed by the Appellant is not maintainable and same is liable to be dismissed with costs.

25 The learned counsel for the Respondent submits that the appeal is liable to be dismissed on the ground that the mentally ill person is not made a party to the present proceedings. He submits that when it is the case of the Appellant that Ms. Jessica was not mentally affected person, then it was a duty of the Appellant to make her party so that she can appear before court for herself and point true facts. Hence, for non joining of necessary party, the First Appeal is liable to be dismissed with costs.

26 The learned counsel for the Respondent further submits that the Appellant's rights are not going to affect, because the Respondent is not going to be used the said order against them in any proceeding whatsoever. Therefore, the First Appeal is liable to be dismissed with costs.

27 The learned counsel for the Respondent further submits that the Trial Court, after following due process of law, passed the impugned order relying on the certificate issued by J.J.Hospital and therefore, there is no question of setting aside the order only on the ground of non compliance of Chapter VI of the said Act. He submits that bare reading of the certificate issued by J.J.Hospital clearly shows that the same was issued by the Hospital after following due process of law. He submits that it is specifically stated in the said certificate that Jessica was brought to the hospital on 28.08.2014, 20.12.2014 and 12.02.2015. He submits that it is specifically stated in the certificate that "the patient is of unsound mind at present".

He submits that along with the said certificate, the Respondent has specifically pointed out in his petition that, since 1995 Ms.Jessica was showing sign of mental incapacity in her day to day work. He submits that the Trial Court has considered these facts and passed the impugned order. This itself shows the compliance of section 50 of the said Act. He submits that the Trial Court has specifically recorded in roznama that Ms. Jessica was present before the court, when the petition for appointment of a guardian u/s.53 of the said Act was filed. This itself shows the compliance of Chapter VI of the said Act.

28 The learned counsel for the Respondent submits that considering the facts of the case and as the Respondent was taking care of Ms.Jessica for last several years, the Trial Court has rightly appointed the Respondent as a guardian. Not only that as per section 57 of the said Act, the Trial Court has specifically given reason that, in the interest of justice, the Respondent is a fit person to appoint as a guardian. He submits that in any case, if there is any procedural defect at the time of passing the impugned order then that cannot vitiate the entire proceedings. In support of his contention, he relies on the following judgment.

(i) Collector Land Acquisition, Anantnag and Ors. Vs. Mr.Katiji 1987 (2) SCC 107

(ii) Sardar Amarjit Singh Kalra (dead) by Lrs. and Ors. Vs. Pramod Gupta (Smt) (Dead) by LRs. and Ors. 2003 (3) SCC 272

(iii) Byram Pestonji Gariwala Vs. Union Bank of India & Ors. (1992) 1 SCC 31

(iv) Mahadev Govind Gharge & Ors. Vs. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka (2011) 6 SCC 321

29 The learned counsel for the Respondent submits that in view of death of Ms.Jessica on 28.08.2019 nothing survives in the present proceedings. In support of his contention, he relies on the following judgments:

(i) Gurdit Singh & Ors. Vs. Munsha Singh & Ors. (1977) 1 SCC 791

(ii) State of Punjab & Ors. Vs. Gurdev Singh (1991) 4 SCC 1

(iii) Smt.Phool Rani & Ors. Vs. Naubat Rai Ahluwalia (1973) 1 SCC 688

30 On the basis of these facts, the written submissions and the authorities, the learned counsel for the Respondent submits that there is no substance in the present appeal and same is liable to be dismissed with costs.

31 Heard both sides at length. After considering the submissions made by both the counsel, perusing the record and proceedings received from the Trial Court and the documents on record following points arise in the First Appeal.

Sr. No.	Points	Findings
1	Whether the appeal is maintainable when alternate remedy is available?	Yes

2	Whether the Appellant is competent to file the First Appeal ?	Yes
3	Whether the appeal is maintainable for non joining of mentally ill person ?	Yes
4	Whether the impugned order is in compliance of chapter VI of the Mental Health Act 1987?	No
5	What order ?	Appeal is allowed

32 It is to be noted that in the present proceedings the Appellant had initially filed Civil Application No.1042/2017 for leave to appeal before this court against the impugned order dated 10.04.2015 passed by the Trial Court. The Appellant had placed on record the following documents along with the said Civil Application to show how they are interested in the proceedings filed by the Respondent and why they are challenging the said order before this court.

a. Copy of order dated 11.03.1993 passed by this court (Ordinary Original Side Civil Jurisdiction) in Company Petition No.613/1984.

b. Copy of order dated 03.05.2012 passed by this court (Ordinary Original Side Civil Jurisdiction) in Company application No.197/2010 in Company Petition No.613/1984 M/s. Kay Kay Trading Co. - Original Petitioners And Jessica Lukmani - Applicant Vs. Official Liquidator, High Court, Bombay and others - Respondents.

c. Affidavit dated 02.02.2015 affirmed by Ms.Jessica Iqbal Lukmani along with police complaint, public notice of revocation of Power of Attorney and letter issued to the Advocate on record in Company Petition No.19/2014 Ms.Jessica Iqbal Lukmani through her next friend Mr. Vinod Shenoy in the matter between Mrs. Jessica Iqbal Lukmani Vs.

Dynacraft Machine Co. Ltd. & Ors.

d. Copy of application dated 21.01.2017 filed by the Respondent in Company Petition No.19/2014 where Respondent No.1 appellant of the First Appeal i.e. Dynacraft Co. Ltd. Said Civil Application was allowed by this court by order dated 13.04.2017 and granted permission to the Appellant to file the First Appeal after hearing both sides.

e. The Appellant also filed Civil Application No.1296/2017 for condonation of delay in filing the First Appeal challenging the impugned order passed by the Trial Court. Delay was also condoned by this court.

33 The Appellant also filed Civil Application No.1297/2017 for stay of the operation and implementation of the impugned order dated 10.04.2015 passed by the Trial Court in the said petition, wherein the Appellant had placed the following documents:

a. Affidavit dated 02.02.2015 affirmed by Ms.Jessica in Company Petition No.19/2014 before the Company Law Board (Mumbai Bench).

b. Copy of letter dated 10.02.2017 from Veritas Legal, Advocates and Solicitors for the Appellant to the Advocates Thodur Law Associates for Ms.Jessica.

c. Copy of application dated 21.01.2017 filed by the Respondent in Company Petition No.19/2014.

d. Copy of Suit No.286/2015 filed by Ms.Jessica against the Respondent along with its exhibits and roznama.

e. Civil Application No.1297/2017 was decided by this court by order dated 13.04.2017 after hearing both sides and granted interim relief in favour of the Appellant.

f. Above mentioned documents were placed by the Appellant on record from time to time to show that they disclosed the relevant documents and placed on record before this court. Therefore, the preliminary objection raised by the advocate for the Respondent that the Appellant cannot rely upon those documents at the time of argument without disclosing the same, is over-ruled.

34 I have gone through the record and proceedings called from the Trial Court. After hearing both sides and considering the rival submissions made by both the parties and also perusal of the voluminous record placed on record, I record my findings on the points framed for consideration in the present matter, as under:

35 **Point No.1** : Whether the appeal is maintainable when alternate remedy is available?

The learned counsel for the Respondent submits that the First Appeal as it is filed by the Appellant itself is not maintainable because the alternate remedy is available to the Appellant as per the said Act. He submits that as per section 65 and 69 of the said Act, the Appellant had to move before the Trial Court. He submits that without moving the Trial Court for their grievance, the Appellant had directly filed the present appeal u/s.76 of the said Act challenging the impugned order. Hence, the appeal itself is not maintainable.

36 In support of his contention, the learned counsel for the Respondent has relied upon the judgment of the apex court in the matter of Guwahati Carbon Ltd. (Supra). Bare

reading of this judgment shows that the said authority is not applicable to the facts of the present case at all. The apex court in that matter held that, when an alternate remedy is available, there is no question of entertaining the Writ Petition by the High Court under Article 227 of the Constitution of India. That is not the case in hand. In the present proceedings the Appellant had filed the First Appeal as per section 76 of the said Act. Section 76 of the said reads thus:

76. Appeals: An appeal shall lie to the High Court from every order made by a District Court under this Chapter.”

37 Bare reading of section 76 shows that if any order is passed by the District Court under Chapter VI of the said Act, then appeal can be filed before the High Court.

38 The learned counsel for the Respondent has relied upon the judgment of the apex court in the matter of Thansingh Nathmal (Supra). The issue involved in that authority is in respect of the assessment under the Sales Tax Act. After going through the said Authority, same is not applicable to the case in hand. In view of these facts, the point no.1 is answered in the affirmative, that is, the appeal as it is filed by the Appellant is maintainable u/s.76 of the said Act before this Court.

39 Point No.2: Whether the Appellant is competent to file the First Appeal ?

It is to be noted that in the present proceedings at the time of filing the said petition, the Respondent made a specific averment in para 14 of the said petition that the Director of the Appellant manipulating the decision of Ms. Jessica transferred the entire portion of the estate in Dynacraft. Para 14 reads thus:

14. The Petitioner states further that the directors of Kalpataru Group have by manipulating the said Jessica caused to transfer the entire portion of the shares held by the said Jessica in Dynacraft Machine Company Limited, a company promoted by the Late husband of the said Jessica by taking undue advantage of the mental health of the said Jessica and that the Petitioner has also filed appropriate proceedings before the Hon'ble Company Law Board, Bombay Bench, being Company Petition No.19 of 2014 for oppression and mismanagement. The Petitioner craves leave to refer to and rely upon the said proceedings as and when produced."

40 Apart from that the Respondent had filed several application on the basis of the impugned order in another proceedings pending before the Company Law Board and High Court challenging the right of the Appellant. In view of these facts the appeal filed by the Appellant is maintainable against the impugned order. Hence, point No.2 is answered in the affirmative i.e. the Appellant is competent to file the First Appeal to challenge the impugned order. It is to be noted that in the present proceedings the learned counsel for the Appellant has pointed out that, initially the Official Liquidator was appointed. He was discharged and therefore, there is no bar of section 457 (1)(a) of the Companies Act 1956 for filing the First Appeal before this court.

41 Point No.3: Whether the appeal is maintainable for non joining of mentally ill person ?

Bare reading of Chapter VI of the said Act and particularly section 76 shows that there is no question of joining the mentally ill person as party Respondent. In the present proceedings the Appellant is challenging the impugned order dated 10.04.2015 passed by the Trial Court on the petition filed by the Respondent u/s.53 of the said Act. Therefore, the Respondent only is a proper party in the present proceedings. Hence, it is held that the appeal as it is filed by the Appellant is maintainable without joining the mentally ill person. Hence, point No.3 is answered in the affirmative.

42 Point No.4 : Whether the impugned order is in compliance of chapter VI of the Mental Health Act 1987?

It is to be noted that bare reading of section 50 of the said Act shows that before passing any order, a duty cast upon the Trial Court to hold an inquiry into the mental condition of such person. Bare reading of the impugned order dated 10.04.2015 passed by the Bombay City Civil Court at Mumbai in the said petition shows that, the Trial Court has relied only on the medical certificate, decree of divorce of Ms. Jessica, marriage certificate of Ms. Jessica, public notice issued by Ms.Jessica Lukmani about the immovable property, General Power of Attorney. It is to be noted that nowhere it is stated in the said order that the Trial Court issued notice to the said Ms.Jessica to remain

present before the court for interview. Not only that, nowhere it is stated in the impugned order that any question was asked by the Trial Court to Ms. Jessica to verify whether she was really mentally ill person or not. Apart from that, the reason given by the Trial Court in para 3 is also contrary to the provisions of the said Act. There is no question of relying on the decree of divorce of Ms. Jessica for passing the impugned order. Therefore, on the basis of these documents the court cannot come to the conclusion that, whether the person is mentally ill or not. Not only that even the marriage certificate of Ms. Jessica does not show her mental position, when the application was filed by the Respondent under the said Act. Apart from that there is no question of considering the public notice and/or General Power of Attorney executed by her for deciding the matter on merits.

43 Bare reading of the certificate dated 23.02.2015 issued by J.J.Hospital shows that the same was issued on the basis of the application filed by the Respondent dated 19.12.2014, when this court called upon the advocate for the Respondent to place on record said application dated 19.12.2014 he shown his inability to do so. This itself shows that the Respondent on his own obtained certificate from J.J.Hospital and placed on record before the Trial Court. The Trial Court, without taking interview of Ms. Jessica, relied on the said certificate. Even the said certificate shows that Ms.Jessica was brought to the hospital on 20.08.2014, 20.12.2014 and 12.02.2015. In the present proceedings the Respondent filed the petition u/s. 53 of the

said Act on 02.02.2015. This itself shows that before filing the petition, the Respondent had started process of taking medical certificate from J.J.Hospital. The Trial Court without calling any witness from J.J.Hospital, has blatantly accepted the same and passed the impugned order.

44 It is to be noted that though the order was passed by the Trial Court on 10.04.2015 the Respondent failed and neglected to place on record the before the Trial Court material evidence, which is as under:

- a. Will dated 21.05.2013 executed by the deceased Jessica inf avour of the Respondent in which she relied on the certificate issued by the Doctor stating that she is in sound mind to execute the Will.
- b. Copy of affidavit dated 02.02.2015 duly affirmed by Ms.Jessica filed in Company Petition No.14/2014 wherein she has specifically stated that she is in sound mind and her son Respondent acted against her interest.
- c. Copy of complaint dated 02.02.2015 filed by the deceased Jessica through her Advocate Sgar Divekar with Senior Inspector of Police, Cuff Parade Police Station stating that her son had committed several offences against her and tried to grab her property.
- d. Copy of plaint in S.C.Suit No.286/2015 filed by deceased Jessica against the Respondent on 15.01.2015 for several reliefs including cancellation of the power of attorney and the Will.
- e. Ad-interim relief granted against the Respondent on 06.02.2015 in Suit No.286/2015.
- f. All these documents show that some dispute was going-on between the Respondent and his mother. Though all these documents were in the knowledge of

the Respondent, he failed and neglected to disclose before the Trial Court, when the impugned order was passed on 10.04.2015.

45 Apart from that the Trial Court has failed to issue notice u/s.57 of the said Act which clearly shows that the legal heir of the mentally ill person cannot be appointed u/s.53, 54 or 55 of the said Act as guardian of the said person. Section 57 reads thus:

57. Appointment and remuneration of guardians and managers -

(1) No person, who is the legal heir of a mentally ill person shall be appointed under sections 53, 54 or 55 to be the guardian of such mentally ill person or, as the case may be, the manager of his property unless the District Court or, as the case may be, the Collector, for reasons to be recorded in writing, considers that such appointment is for the benefit of the mentally ill person.

(2) The guardian of a mentally ill person or the manager of his property or both appointed under this Act shall be paid, from out of the property of the mentally ill person, such allowance as the appointing authority may determine.”

46 If the court comes to the conclusion that the legal heir is required to be appointed as a guardian under the said Act in that case the District court or as the case may be, the Collector has to give reasons in writing. Bare reading of the impugned order clearly shows that the Trial Court has failed to consider section 57 of the said Act at the time of passing the impugned order. On this ground also, the said order is liable to be set aside.

47 It is to be noted that even the Delhi High Court, in the

matter of Bhagwan Vs. State & Ors. (supra) has specifically held that if the procedure as required under Chapter VI of the said Act is not followed, then the order is liable to be set aside.

48 The authorities cited by the advocate for the Respondent in the matter of Collector of Collector Land Acquisition Vs. Katiji (supra), Sardar Amarjit Singh Kalra (Supra) and Byram Pestonji Gariwala (Supra) are not applicable in the facts and circumstances of the present case.

49 In the present proceedings the issue involved is “whether the impugned order passed by the Trial Court is in compliance of Chapter VI of the said Act?” Bare rading of the said order shows that the Trial Court has failed and neglected to comply with the said proceedings which is mandatory in nature.

50 In view of the above mentioned observations, point No.4 is answered in the negative i.e. the Trial Court has failed to comply with the provisions of section 67 of the said Act while passing the impugned order.

51 In view of these facts, I am of the opinion that the Appellant has made out a case for allowing this First Appeal.

52 Hence, following order is passed:

- a. Oral Order dated 10.04.2015 passed by the Bombay City Civil Court at Mumbai in Mental Health

Petition No.4/2015 filed by the Respondent for appointing guardian u/s.53 of the said Act is set aside with costs.

- b. The First Appeal is allowed.
- c. Decree be drawn up accordingly.

(K.K.TATED, J.)