

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****WRIT PETITION NO. 4478 OF 2017**

(Smt. Rajni Wd/o Ashok Nasre and ors. -Vs- Smt. Shyamabai Laxminarayan Yadav and ors.)

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

Court's or Judge's orders

Shri Alok Daga, Adv. With Shri N.A. Nasre, Adv. for petitioners.
Shri P.L. Naidu, Adv. h/f Shri N.D Jain, Adv. for respondents.

CORAM : Z.A.HAQ, J.

DATED : 21st August, 2019

Heard.

By order dated 12.01.2017, the learned trial Judge has allowed the application (Exhibit 134) filed the plaintiff under Order XXXII Rule 15 of the Code of Civil Procedure. By this application (Exhibit 134) it was prayed that plaintiff's son be appointed to represent her, as the plaintiff is not mentally fit to prosecute the civil suit. The impugned order is challenged by the defendants on the ground that the application (Exhibit 134) is allowed without conducting any enquiry as contemplated by Rules 1 to 14 of Order XXXII of the Code of Civil Procedure.

It is further submitted that the documents on which the plaintiff relied to support her contention that she is not fit mentally to prosecute the civil suit, are of 2014 and 2015, and in March, 2016 the plaintiff has sworn an affidavit in support of the reply to the amendment application. It is submitted that the plaintiff is feigning to be of unsound mind only to avoid cross-examination. It is prayed that the impugned order be set aside and the application (Exhibit 134) be dismissed.

Learned Advocate for the respondent No. 1 and respondent Nos. 2 to 7 have supported the impugned order.

With the assistance of the learned Advocates for the respective parties, I have examined the documents placed on record of this petition. Though the relevant documents i.e. medical reports are not placed on record, copy of certificate issued by Dr. Chandrashekhar Meshram and prescription of medicines are on record. In the certificate dated 11.08.2016, it is stated that Smt. Shyamabai Laxminarayan Yadav (present respondent no. 1/plaintiff) was suffering from Hypertension with impairment of memory and was under the treatment of that Doctor. The petitioners have not been able to create any doubt about the genuineness of the documents placed on record of the trial Court by the respondent No. 1-plaintiff.

In the facts of the case, it cannot be said that the learned trial Judge has passed the impugned order mechanically and has not conducted any enquiry. It cannot be said that the learned trial Judge has committed any illegally or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the Writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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