

\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 09.12.2019

+ W.P.(C) 4697/2019
SH. GULSHAN BHATIA

..... Petitioner

Through: Mr.Vineet Mehta, Adv.

versus

STATE (THOROUGH GNCT OF DELHI) AND ORS.

..... Respondents

Through: Ms.Shefali Vohar, Adv. for
GNCTD.
Mr.D.K. Bhatia & Ms.Alka
Bhatia Nargas, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present petition has been filed *inter alia* praying for following direction:-

“a) Issue a writ of Mandamus thereby appointing the petitioner as a guardian of his daughter Ms. Deepika Bhatia resident of 169, Gali No. 17, West Azad Nagar, Krishna Nagar, Delhi-110051 and to permit the petitioner to protect her interest for all necessary purposes.

b) Issue such other appropriate writ or direction that may be deemed to be just and equitable in the facts and circumstances of the case and in the interest of justice.”

2. It is the case of the petitioner that Ms. Deepika Bhatia, aged about 41 years is one of the two children of the petitioner and Smt. Ranjana Bhatia, his wife.

3. Ms. Deepika Bhatia got married to respondent no. 2 on 29.05.2004 at Delhi in accordance with Hindu rites and ceremonies. Respondent no. 3 was born from the said wedlock on 05.03.2005 and therefore is presently a minor.

4. It is further asserted that Ms. Deepika Bhatia had matrimonial discord with respondent no. 2 and having left him, was staying with the petitioner. On her complaint, F.I.R. No. 146/2007 under Section 406/498A/34 of the Indian Penal Code, 1860(IPC) was also registered against the respondent no. 2 and his mother on 07.04.2007 in Police Station, Krishna Nagar, Delhi.

5. On 21.06.2015 at about 6:15 p.m. while Ms. Deepika Bhatia was crossing road near Cross River Mall, near Karkardooma Courts she met with an accident suffering grievous injuries including severe head injury to herself. Consequently, F.I.R. No. 437/2015 under Section 279/337 of the IPC was also registered in Police Station, Anand Vihar, Delhi in this regard.

6. Ms. Deepika Bhatia was initially admitted in Dr. Hedgewar Arogya Sansthan, Karkardooma, Delhi-110032 and later shifted to Max Super Specialty Hospital, Patparganj, Delhi where she was put on ventilator support. On 24.06.2015 she was tracheostomised. The petitioner further asserts that Ms. Deepika Bhatia continues to remain

in Persistent Vegetative State (Coma) even after her discharge on 22.07.2015 and is in continuous treatment under home care. Her condition has not improved and she remains in coma being unable to manage herself or her affairs and is completely dependent upon the petitioner and his family members.

7. It is further asserted that the Board of Doctors of GTB hospital have also issued a Disability Certificate declaring her disability as 100%.

8. In the criminal case filed pursuant to the F.I.R. No. 146/2007 referred hereinabove, the parties were referred to the mediation centre for exploring possibility of an amicable settlement. In such mediation proceedings, the respondent no. 2 had agreed to pay a lump sum amount of Rs. 9 lakhs to Ms. Deepika Bhatia and had given up the custody claim over the respondent no. 3. It is asserted that before her accident Ms. Deepika Bhatia had been staying separately from the respondent no. 2 over about 10 years.

9. Before approaching this Court the petitioner had filed a Civil Suit bearing No. 223/2018 before the Court of the learned Senior Civil Judge, Shahdara, Karkardooma Courts *inter alia* praying for a decree of declaration of the petitioner as the guardian of his daughter Ms. Deepika Bhatia. The said Suit was however dismissed by the learned Additional Civil Judge (Shahdara) by the order dated 27.04.2018 holding that such a declaration cannot be granted and such direction can be given only by the High Court or the Supreme Court in exercise of the Writ Jurisdiction.

10. The petitioner has thereafter filed the present petition.

11. By an order dated 03.05.2019, the respondent no. 2 was directed by this court to pay a sum of Rs. 1,50,000/- to the petitioner as an *ad hoc* measure. The said order had been duly complied with.

12. By the subsequent order dated 05.11.2019, this Court directed the respondent no. 1 to conduct an enquiry into the medical status of the daughter of the petitioner and such other relevant factors as may be necessary for the present petition. Today in Court, the learned counsel for the respondent no. 1 has submitted the report dated 28.11.2019 prepared by the Tehsildar, Vivek Vihar stating that on an enquiry being conducted by the Kanungo (Vivek Vihar), it had been ascertained that Ms. Deepika Bhatia had met with an accident in the year 2015 and since then has been in coma (Persistent Vegetative State); the petitioner is taking care of Ms. Deepika Bhatia and respondent no. 3; both Ms. Bhatia and respondent no. 3 are totally dependent on the petitioner.

13. The learned counsel for the respondent no. 2 also does not deny the above position. He infact supports the present petition.

14. This Court in ***Pratibha Pande and Anr vs. Union of India and Ors***, (2016) 229 DLT 512, in similar circumstances had held that the High Court exercising power under Article 226 of the Constitution of India is the ultimate guardian of the disabled persons who are non sui juris. In light of this, the Court appointed the daughter of the person lying in comatose position as a guardian.

15. Similarly the High Court of Madras in *Sairabanu Mohammed Rafi vs. State of Tamil Nadu and Ors.*, 2016 SCC OnLine Mad 8091 and Bombay High Court in *Philomena Leo Lobo vs. Union of India and Others*, 2017 SCC Online Bom 8836, has appointed guardians of the persons who were in comatose state.

16. In the present case, as noted hereinabove, Ms. Deepika Bhatia is in a comatose state having met with an accident on 21.06.2015. The report of the Tehsildar has also found Ms. Deepika Bhatia to be in the said position. The petitioner is the father of Ms. Deepika Bhatia. Before her accident, she was estranged from her husband-respondent no. 2, who has infact, supports the present petition. Respondent no. 3 is the son of Ms. Deepika Bhatia and is a minor.

17. Keeping in view the above peculiar facts, I appoint the petitioner as the guardian of Ms. Deepika Bhatia to protect her interest for all necessary purposes, including seeking decree of divorce from respondent no. 2.

18. The Petitioner has, however, not disclosed the bank account details and/or other immovable or movable properties of Ms. Deepika Bhatia. In absence thereof, it is directed that before dealing with any asset of Ms. Deepika Bhatia, the petitioner shall take prior permission of this Court.

19. As far as the grant of divorce by mutual consent is concerned, the same shall be considered by the Competent Court as and when

such petition is filed by the parties and considering the best interest of Ms. Deepika Bhatia as also the respondent no. 3.

20. The petition is allowed in the above terms.

NAVIN CHAWLA, J

DECEMBER 09, 2019/rv

