

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2529 OF 2018

Mrs.Geeta Bhagwatiprasad Nawalgaria

Sandeep Bhagwatiprasad Nawalgaria Petitioner

Vs.

1. Mr. Bhagwati Prasad Nawalgaria

2. Mrs. Dipika Jain @ Dipika

Bhagwatiprasad Nawalgaria Respondents

Mr. Rajaram V. Bansode for Petitioner/s
None for Respondents.

Coram : NITIN W. SAMBRE, J.

Date : 24th January, 2020

P.C.:

1. This Court passed detailed order dated 13th October, 2018 and caused notice to the other side.

2. The Petitioners are mother and son, whereas the respondents are father and daughter.

3. Though served, none appeared for respondent no.1 on 10th January, 2020, as such petition was adjourned the matter for today, by way of last chance. Today also none appeared for the respondents.

4. In paragraph 6 of the order passed on 13th March, 2018, this Court made following observations :

“6. In the peculiar, the facts of the case, the Family Court is already proceeding in the matter and has issued direction by the impugned order dated 6th January, 2018 to file a notarized affidavit. Before the said directions are implemented, it would be expedient to have the petitioner examined thoroughly by the competent doctors who are expert in the said field and then the direction be issued to file a notarized affidavit. In absence of this examination of mental and physical state of the petitioner, even this time, there is likelihood that it would result into injustice, as the petitioner is merely signing on the affidavit which she is going to file before the Family Court. Since the Family Court is proceeding with the matter, till the respondents are served and they have been offered an opportunity to present case before this Court, the Family Court is restrained from proceedings in terms of the impugned order 06th January, 2018, till next date of hearing.”

5. In the backdrop of aforesaid observations, Shri. Bansode, learned counsel for the Petitioner would urge that petitioner No. 1, Mrs. Geeta Bhagwatiprasad Nawalgaria is ready and willing to get examined by a doctor so as to establish her mental health and to know as to whether she would be in a position to adduce evidence in the pending matters before the Family Court.

6. Since the aforesaid contentions are not controverted, in my opinion the present petition can be disposed of with following directions:

- (i) “Petitioner No.1- Mrs. Geeta Bhagwatiprasad Nawalgaria shall appear before expert Board to be constituted by the Dean/Director of Cooper Hospital, Bombay”;
- (ii) The said Board shall examine the mental health of Petitioner no.1- Mrs. Geeta Bhagwatiprasad Nawalgaria as to whether she is in fit state of mind to depose before the Court below. The Medical Board shall forward a report to the Family Court, Bandra in

Civil Miscellaneous Application No. 25 of 2014,
pending on the file of the Family Court, Bandra.

- iii) On such a report is placed on the record of the Family Court, a copy thereof be made available to the parties of the said application.
- iv) Based on the said report, the parties will be at liberty to agitate their grievances afresh as to whether the Petitioner no,. 1- Geeta can be subjected to cross-examination in the proceedings or herself can be permitted to examine on her behalf.
- v) The Petition stands disposed of in above terms.

7. Considering the advance age of the parties and the fact that the proceedings are pending for more than five years, it will be appropriate to expedite the proceedings pending before the Family Court.

8. Till the report is received by the Family Court, the interim order passed on 13th March, 2018 thereby staying the proceedings before the Family Court shall continue to govern the proceedings.

(NITIN W. SAMBRE, J.)