

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9585 OF 2023

Smt. Mohini Madhukar Mhaske and another Petitioners
Versus

Nil Respondent

.....
Mr. Vivek V. Tarde, Advocate for the Petitioners
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th September, 2023

ORDER :

1. Petitioner No.1- Smt. Mohini Wd/o Madhukar Mhaske has filed this writ petition under Articles 226 and 227 of the Constitution of India, challenging the order passed by learned District Judge-1, Shrigonda in Civil Misc. Application No.39 of 2022.

2. Petitioner No.1 a widow of martyred Army man filed Application filed under Section 8 of the Guardians and Wards Act, seeking permission of the District Judge for selling three flats standing in the name of minor son Aditya, in short contending that, she has purchased plot No.3/4 out of Gut No.949/1, admeasuring 314.60 Sq. Mtrs. in the name of minor son Aditya, from the amount received from Army after the death of her husband. By raising loan from relatives and

financial institutions, she has constructed a three storied building on the said plot consisting three flats on each floor. For repayment of the loan obtained by petitioner No.1, she is intending to sell three flats on third floor. She needs that amount also for incurring day to day expenses as well as educational expenses of minor son Aditya and daughter Ankita, who are taking education in 8th and 9th standard respectively. The amount received from the sale of three flats will be spent by the petitioner for repayment of the loan and for welfare of the minor. Petitioner No.1 has entered into registered agreement of sale dated 18/04/2022 with Dilip Mhaske and Sau Sangita Mhaske, and has accepted earnest amount. However, since the said property stands in the name of minor, she needs permission of the Court for sale of three flats.

3. On receipt of the application, public notice was issued in daily newspaper 'Prabhat' and proclamation notices were issued and copies of them were affixed on notice boards of Municipal Council Office, Talati Office, Tahsil Office, Taluka Court at Shrigonda, Collector Office at Ahmednagar and the petitioners house. No body has raised any objection before the Trial Court. The Trial Court, therefore, after considering the

record, allowed the application by permitting petitioner No.1 to sale flat Nos.301, 302 and 303 in the said property situated at third floor of the building namely, 'Major Madhukar Mhaske Apartment' with a condition that before executing the document of sale of above mentioned flats, petitioner No.1/guardian shall deposit Rs.25,00,000/- in Fixed Deposit with any nationalized bank in the name of minor Aditya Madhukar Mhaske for the period till he attains majority. Petitioner No.1 is aggrieved by the condition of deposit of Rs.25,00,000/- imposed by the Trial Court.

4. Heard the learned advocate for the petitioners. Perused the Record of the Trial Court, and the undertaking filed by Petitioner No.1.

5. It is clear from the record that the reasons assigned by petitioner No.1 are accepted by the Trial Court and permission is granted. However, the Trial Court has imposed unreasonable condition on petitioner No.1 to deposit Rs.25,00,000/- in the Fixed Deposit.

6. Petitioner No.1 has filed undertaking in this Court, which is marked as 'X' for identification purposes. It is mentioned in the undertaking that an amount of Rs.15,00,000/- received from Army Group Insurance Fund is

already deposited in the joint account of petitioner No.1 and her son and daughter, and since petitioner No.1 has incurred loans while constructing the said building, she is not in a position to deposit an amount of Rs.25,00,000/- as directed by the Trial Court.

7. Considering the fact that there are total nine flats in the said building and out of them, petitioner No.1 is only seeking permission to sell three flats and six flats are remaining, and considering the undertaking filed by petitioner No.1 that six remaining flats would stand in the name of both the minors i.e. Aditya and Ankita, and she will not sell those flats till both the minors attain majority, and the fact that an amount of Rs.15,00,000/- is kept in Fixed Deposit in the joint name of petitioner No.1 and son and daughter, this Court is inclined to allow the petition.

8. In the result, the writ petition is allowed.

9. By accepting the undertaking, the condition imposed by learned District Judge-1, Shrigonda, to deposit Rs.25,00,000/- in Fixed Deposit in the name of minor Aditya Madhukar Mhaske till he attains majority, is hereby quashed and set aside.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane