

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5604 OF 2023

Girish Chotalal Joshi

...Petitioner

Versus

State of Maharashtra

..Respondent

*Dr. Abhinav Chandrachud, Mr. Anuj Desai, Mr. Umesh Tawari and Mr. Rhythm Rathod i/b S. Ashwinikumar & Co., LLP for the petitioner.
Sachin Kankal, AGP for respondent.*

Coram : Sharmila U. Deshmukh, J.

Date : July 3, 2023.

P. C. :

1. The petitioner questions the order dated 30th November, 2019 passed by the City Civil Court in Misc. Application No. 73 of 2019, as well as the order dated 23rd December, 2022 passed in Misc. Application No. 50 of 2020. The petitioner and his wife Devyani Girish Joshi were appointed as total support guardians of one Kashmira Kamalkant Joshi who is a elderly lady, aged about 83 years. The order of appointment of the petitioner and his wife was passed on 5th February, 2019 under the provisions of section 14(1) of the Rights of the Persons with Disabilities Act, 2016.

2. The ward i.e. Kashmira Kamalkant Joshi was stated to be suffering from mental illness of Alzheimer resulting in complete

deterioration of her memory and loss of thinking skill and in view thereof Mental Health Petition No.351 of 2018 was filed by the petitioner along with his wife for appointing themselves as guardians of the ward, the petitioner being brother-in-law of the ward.

3. The factual position is that the husband of Ward expired on 20th January, 2017. Mental Health Petition No. 351 of 2018 was adjudicated by the City Civil Court for Greater Mumbai and considering the disability certificate, the Court came to a conclusion that the patient needs full time support. The claim of petitioner and his wife was supported by the daughter of Ward who was stated to be the only heir of Ward. While considering the appointment of petitioner and his wife as total support guardians to take care of the person and property of Ward, the Court observed that the blanket permission sought by the petitioner to alienate the properties of ward could not be granted and required to be dealt with on a case to case basis when the properties are sought to be alienated. It is further observed that at that time the Ward's daughter also needs to be consulted and as such passed the following order :

"The petitioners Dr. (Mrs.) Devyani Girish Joshi, aged 69 years and Mr. Girish Chhotalal Joshi, aged 71 years, are jointly and severally appointed under section 14(1) proviso of the Rights of Persons with Disabilities Act, 2016 as the Total Support Guardians for Mrs. Kashmira Kamlakant Joshi, aged about 78

years and for her properties.

The petitioners shall furnish to this office in three months at the close of every financial year an account of the property and assets of Mrs. Kashmira Kamlakant Joshi in their charge and the sums received and disbursed on account of her and balance remaining with the petitioners.

The petitioners shall take prior permission of this Court before alienating any of the immovable properties of Mrs. Kashmira Kamlakant Joshi.

The petition is allowed and disposed of accordingly.”

4. In view of the condition imposed by the Court that the petitioners shall take prior permission before alienating any of the immovable properties of Ward, the first Misc. Application No. 73 of 2019 was filed by the petitioners seeking permission to sell one of the property being Industrial Unit No.1, admeasuring about 535 sq.ft carpet area situated on the ground floor of building known as Upadhyay Shriram Industrial Estate, of Upadhyay Shriram Industrial Premises Co-operative Society Limited on the ground that the property was lying idle and the sale proceeds from the unit can be utilized for maintaining the Ward. The said application came to be rejected by the Court vide order dated 30th November, 2019 by observing that the document which was produced i.e. the copy of the index-II and the conveyance deed was not the document of title as the conveyance deed pertains to the whole premises of 1806.60 sq. ft. in

which Unit/Godown No. 1 was situated. Another reason for rejecting the application was, to prove the ownership of the Ward unregistered agreement to sell between the Ward and her predecessor-in-title was produced and in the draft deed of transfer, the Ward along with her husband was referred to as the purchasers. The Court on the basis of documents on record came to a *prima facie* conclusion that the documents show an interest of the husband of Ward in the unit and even the share of the applicant was not ascertained and considering this fact, the grant of permission was not in the interest of the mentally ill person.

5. To overcome the deficiencies which were pointed out in the order dated 30th November, 2019, the documents showing entitlement of the Ward to all right and title in Godown No.1, the Second Misc. Application No. 50 of 2020 was filed. By that application, the valuation report of the suit premises, the affidavits and declaration-cum-relinquishment of deeds of the legal heirs was filed as also the share certificate. This application also came to be rejected by holding that filing of affidavit of legal heirs is not sufficient to conclude that the Ward has acquired exclusive right in the property in question. Whilst doing so, the Court took into consideration the observation in the earlier order dated 30th November, 2019.

6. Learned counsel appearing for the petitioner tendered a genealogy of the family and has pointed out that the declarations-cum-relinquishment deed as well as the affidavits of the necessary legal heirs have been placed on record to show the consent of the parties to sell Unit/Godown and also as regards the fact that the legal heirs have considered the Ward to be the sole owner of the property and that the husband of the Ward, i.e. Kamlakant Chotalal Joshi had no interest in the property. He has further relied on the unregistered agreement for sale dated 21st March 1981 and points out the recital in the said agreement that the second purchaser i.e. the husband of Ward has been joined as a purchaser in this agreement only for the sake of convenience and no consideration has been paid by the second purchaser to the vendor. Drawing support from the recital, learned counsel for the petitioner would urge that the same establishes the rights of the Ward as the sole owner of the property. He would further contend that the name of the husband of the petitioner was joined in for the purpose of convenience and the agreement executed in the year 1981 was also not hit by the provisions of the Benami Properties Act which was enacted in the year 1986.

7. He would further urge that the declaration cum relinquishment deed which is executed by the legal heirs of the Ward

as well as her husband, will not require registration as it can be said that it is a record of the family arrangement which has been arrived at between the family members.

8. Considered the submissions.

9. As the order dated 5th November, 2019 imposed the condition that the petitioner shall furnish to the City Civil Court in three months at the close of every financial year an account of the property and assets of the Ward and sums received and disbursed on account of the Ward and the balance remaining with the petitioner, a query was put to the learned counsel appearing of the petitioner as to whether the said condition has been complied with. In reply thereto, an additional affidavit dated 26th June, 2023 has been filed by the petitioner annexing thereto the financial statements certified by a Chartered Accountant. Perusal of the financial statements indicate that the valuation of the assets as on 31st March, 2019 was Rs.6,15,43,375/- and as on 31st March, 2023 it is Rs. 8,43,13,588/-. From a perusal thereof, it can be inferred that there has been a considerable growth in the assets of Ward and that the financial interest of the Ward is being taken care of.

10. The application in question came to be filed pursuant to the

condition which had been imposed by the Court while appointing the petitioner and his wife as total support guardians of the ward. There is no dispute about the position that the petitioner was appointed as guardian of the Ward as he was related to the Ward and also there was support by way of an affidavit filed by the daughter of the Ward that the petitioner was taking complete care of the patient. The Court while passing the order dated 5th February, 2019 has sought to protect the financial interest of Ward and, as such, had imposed the condition of taking prior permission before alienating any of the immovable properties of the ward, and in my opinion, rightly so.

11. The application which has been filed seeking permission to alienate one of the property which is Unit/Godown No. 1 situated in a industrial estate. The permission is sought on the ground that the said property is not in use of the Ward or any of the legal heirs and the sale proceeds can be utilized for looking after the needs of the Ward. In support of their application there are affidavits as well as the declaration-cum-relinquishment deed of the legal heirs of the husband of the Ward supporting the decision of the petitioners to sell the property. The applications have come to be rejected on the ground that the petitioners have failed to demonstrate that the Ward is the sole owner of the property in question. In my opinion, while

deciding as to whether the permission can be granted for sale of the property by the guardians, the issue which will have to be considered is not the title of Ward in the subject premises but as to whether the alienation is in the interest of Ward and as to whether the same can be permitted by putting the guardians to terms to ensure that the sale proceeds are utilized for the benefit of Ward.

12. In the present case, there is no dispute between the legal heirs of Ward and her husband that the property in question was purchased by the Ward and that they do not consider the husband of Ward to be the owner for the reason that his name appears in the unregistered agreement for sale. On the contrary, the affidavits on record show that the entire sale contribution was contributed by the Ward and there was no consideration which passed from the husband of Ward to the vendors. It is further stated in those affidavits that the claim of sole ownership is supported by inclusion of the premises in the wealth tax return of Ward which property did not form part of the wealth tax return filed by her husband. Considering the consent which has been accorded by the legal heirs of Ward permitting the guardians to dispose of the property as they may deem fit and appropriate in their own discretion, in my opinion, the application for seeking permission to sell Unit Godown No. 1 needs to be allowed.

13. It would be also worthwhile to note that the financial statements which have been produced by way of the additional affidavit discloses that the financial interests of ward are well taken care of inasmuch as there is a growth in the assets of Ward and it cannot be said that the guardians are not dealing with the assets of the Ward in her best interest. In my opinion, if at all there is any defect in the title of Ward then it is for the purchasers to exercise due diligence and take appropriate decision. In my opinion, while dealing with the application of the present nature, the Court is not competent to go into the issue of title and the consideration which should guide the Court is the best interest of Ward.

14. In view of the above, the impugned order dated 5th November, 2019 is quashed and set aside. The petitioner is permitted in his capacity as the total support guardian of Kashmira Kamlakant Joshi to sell Industrial Unit No.1 admeasuring 535 sq. ft. carpet area on the ground floor of building known as Upadhyay Shriram Industrial Estate, of Upadhyay Shriram Industrial Premises Co-operative Society Limited in terms of agreement for sale dated 5th August, 2020 which is annexed at Exh-I hereto.

15. The Petitioner is directed to place on record the registered sale deed and also the copy of bank statement indicating that the

amounts have been deposited in the bank account of Ward as also the statement disclosing the manner in which the sale proceeds have been invested. The said statement to be furnished within a period of two months from the date of execution of the sale deed.

16. Needless to state that the condition imposed by the order dated 5th February 2019 directing the petitioners to furnish to the City Civil Court an account of the property and assets of the ward in their charge and the sums received and disbursed on her account and the balance remaining with the petitioners in every three months at the close of every financial year is required to be strictly complied with by the petitioner.

17. The writ petition stands allowed in the above terms.

[Sharmila U. Deshmukh, J.]

This order is corrected as per speaking to the minutes of order dated 14th July, 2023.