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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO.18 OF 2024

Munish Pitamber Gokaldas

...Petitioner

Versus

Sanjay Pitambar Gokaldas

...Ward

Piyush Raheja, Sahil Gandhi, Nupur Desai i/b. Markand Gandhi &
Co. for the Petitioner.

Munish Gokalkdas, Petitioner through V.C.

Vijay Gokalkas, brother of Petitioner through V.C.

CORAM : R.I. CHAGLA J.
DATE : 16TH OCTOBER, 2024.

ORDER :

1. By this Guardianship Petition, the Petitioner is seeking appointment as guardian of the person and the manager of the properties of Sanjay Pitamber Gokaldas (referred to as “the Ward”). Further, the relief is sought for permission to be granted to the Petitioner to let out the property which belongs to the Ward namely Milan Flat, being Flat No.11, admeasuring approximately 525 Sq.ft (carpet area) on the 2nd Floor in the building known as ‘Milan’ situated at 13th Road Khar, Mumbai – 400 052 (referred to as “said Milan Flat”) under the supervision of and on such terms and

conditions this Court deems fit and proper and to do all acts and execute all necessary documents to give complete effect to such leave and license agreement. Further, relief is sought for declaring the Petitioner as Manager of the Ward and taking all decisions necessary and incidental for the welfare and benefit of the Ward, including to deal with the properties set out at Exhibit G to the Petition and to use the proceeds thereto solely for the benefit and upkeep of the Ward.

2. The Petitioner has stated that he is the brother of the Ward. The Petitioner further states that Pitambar Gokaldas and Jayashree Pitamber Gokaldas expired on 28th May, 2018 and 16th January, 2021 respectively, leaving behind their three children, Vijay Pitamber Gokuldas, Munish Pitambar Gokaldas (the Petitioner) and the Ward. The Ward was born on 22nd April, 1969 and copy of birth certificate has been annexed at Exhibit A to the Petition.

3. The Petitioner states that the Ward is currently 55 years of age and unmarried. The Ward suffers from severe mental retardation. The Ward was evaluated by The National Institute of Mental Health and Neuro Sciences, Bangalore. A certificate to that effect issued by The National Institute of Mental Health and Neuro

Sciences, Bangalore on 28th April, 1998 is annexed at Exhibit B to the Petition.

4. The Petitioner has stated that the Ward has been receiving regular treatment at the The National Institute of Mental Health and Neuro Sciences, Bangalore and in 2014, pursuant to further investigation, assessment and identification of the Ward's mental state, the The National Institute of Mental Health and Neuro Sciences, Bangalore has issued certificate dated 26th November, 2014 confirming that the Ward suffers from profound mental retardation and required regular treatment. A copy of the Certificate dated 26th November, 2014 is annexed at Exhibit C to the Petition.

5. The Petitioner has stated that due to mental incapacity, the Ward is incapable of making cogent decisions in his day to day life, as well as major decisions concerning his treatment and well being. Since his parents' death all decisions regarding Sanjay's mental and physical well being have been taken care of by the Petitioner, keeping in mind the Ward's best interest.

6. The Petitioner has stated that the Ward has been residing

at L and L Bhagwandas Sirwani Charitable Trust's 'Prem Seva Nagar' situated at Narasapura Malur Road, Edrakayapura, Narasapura Post Kola District, Karanataka. L and L Bhagwandas Sirwani Charitable Trust is a Trust which aims to bring out the hidden potentials, to provide opportunities for children and adults who are less privileged and to provide opportunities for persons with disabilities to overcome disabilities of diverse nature. The monthly expenses of the Ward which have been incurred for treatment has been taken care by the Petitioner and his brother Vijay,

7. The Petitioner has stated that the Ward's monthly expenses are approximately between Rs.30,000/- to Rs.35,000/- and break up of these expenses is set out in the table at paragraph 8 to the Petition. These monthly expenses do increase in the event of an illness or medical emergency.

8. The Petitioner has stated that the Petitioner's and Ward's grandmother Jamnabai Gokaldas was the owner and well and sufficiently entitled to the said Milan Flat along with 5(five) fully paid up shares of Rs.50/- each bearing Share Distinctive Nos.61 to 65(both inclusive) issued vide Share Certificate No.16 dated 11th

November, 2001 by Sandeepany CHS Ltd.

9. Under Clause 3 of her last will and testament dated 23rd December, 1988, Jamnabai Gokaldas bequeathed an equal half-share of all her gold jewellerys and other precious jewellerys either owned by her or held and possessed by her on the date of her death to the Ward. Clause 3 of the said Will dated 23rd December, 1988 has been referred. Under Clause 4 of her last will and testament Jamnabai bequeathed the said Milan Flat in favour of here grandson i.e. Ward.

10. The Petitioner has stated that Jamnabai Gokaldas expired on 25th May, 1996. The said Milan Flat was initially maintained by the Petitioner's father Pitamber Gokaldas, and after his death, by the Petitioner and his brother, Vijay Pitamber Gokuldas. They have paid all the society dues and repair expenses in respect of the said Milan flat. The Petitioner and his brother incur expenses to the extent of Rs.2,500/- to Rs.3,500/- per month towards maintenance, taxes and repairs and upkeep of the said Milan flat. The receipts issued by the Sandeepany CHS Ltd. in favour of the Petitioner and his brother, as well as receipts issued in respect of repairs carried out for the said Milan Flat are annexed at Exhibits "F

to F-7”.

11. The Petitioner has stated that the Ward’s name is reflected on the share certificate issued by the Sandeepany CHS Ltd. Society in respect of the said Milan Flat and copy of the share certificate has been annexed at Exhibit G to the Petition.

12. The Petitioner states that the said Milan flat is currently unoccupied, and has been so since 2001. The Petitioner further states that although there were informal discussions within the Society to redevelop the building, till date this has not materialized. The Petitioner is desirous of letting out the Milan Flat on leave and license basis in order to generate income to support the expenses that the Petitioner and his brother have incurred on the Ward’s day to day care and medical expenses. The Petitioner has further stated that the Ward is the owner of the said Milan Flat. Apart from the said Milan Flat, the Ward has no other assets or properties in the his own name. The Petitioner further submits that it is necessary for the Petitioner to be permitted as a Manager of the assets and properties of the Ward, to let out the said Milan flat on leave and license basis and to use the income that may be received from letting out the said Milan Flat to

meet the expenses for the Ward's day to day care and medical needs.

13. The Petitioner further submits that he undertakes to submit a statement of accounts on a half yearly basis to the learned Prothonotary and Senior Master setting out the details of the expenses incurred and income received on behalf of Ward.

14. The Petitioner has submitted that apart from the Petitioner and his brother Vijay Gokaldas, the Ward has no next of kin. The brother Vijay Gokaldas resides in Accra, Ghana and therefore is not very easily accessible. Vijay Gokaldas is fully aware of the filing of this Petition and has consented to the appointment of the Petitioner.

15. Accordingly, the Petitioner has submitted that though he resides in Indonesia and regularly travels to Bangalore, the Petitioner is able, ready and willing to be the guardian of the Ward and the manager of the Ward's properties. The Petitioner has stated that there is no conflict of interest or any such circumstances that would preclude or prevent the Petitioner from acting in the best interests of the Ward.

16. Having considered the averments in the Guardianship Petition as well as the relief sought for in the Petition and the fact that other next of kin of the Ward i.e. brother of the Ward, Vijay Gokaldas who is also brother of the Petitioner has appeared virtually and has consented to the relief sought for in the present Petition, it would be in the best interest of the Ward that the Petitioner is appointed as guardian of the Ward and manager of the properties of the Ward. Further, the relief sought for with regard to the Petitioner being permitted to let out the said Milan flat on leave and license basis and upon which the Petitioner will use the income received from same for meeting the expenses for the Ward's day to day care and medical needs also requires to be granted.

17. In view thereof, the Guardianship Petition is allowed in terms of the prayer Clauses (a) to (c) as under:-

(a) That this Hon'ble Court be pleased to appoint the Petitioner as the Guardian of the person and the Manager of the properties of Sanjay Pitamber Gokaldas.

(b) That this Hon'ble Court be pleased to permit the Petitioner to let out the said Milan Flat on leave and license basis, being Flat No.11, admeasuring

approximately 525 Sq.ft (carpet area) on the 2nd Floor in the building known as 'Milan' situated at 13th Road Khar, Mumbai – 400 052 under the supervision of and on such terms and conditions as this Hon'ble Court deems fit and proper, and to do all acts and execute all necessary documents to give complete effect to such leave and license agreement.

(c) That this Hon'ble Court be pleased to declare that as Manager of Sanjay Pitamber Gokaldas, the Petitioner is authorized to take all such decisions necessary and incidental for the welfare and benefit of Sanjay Pitamber Gokaldas, including to deal with the properties set out at Exhibit G hereto, and to utilize the proceeds thereof solely for the benefit and upkeep of Sanjay Pitamber Gokaldas."

18. The Guardianship Petition is accordingly disposed of.
There shall be no order as to costs.

[R.I. CHAGLA J.]