IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203 **CM-3875-CWP-2024 in/and**
CWP-8378-2023
Date of decision: 20.04.2024

Priya Mishra …Petitioner

Versus

The State of Haryana & ors. …Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Ravinder Chaudhary, Advocate and
Mr. Parteek Aggarwal, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Addl.A.G., Haryana.

Mr. Lajpat Rai Sharma, Advocate,
for respondent No.6.

VINOD S. BHARDWAJ, J. (Oral)

CM-3875-CWP-2024

This is an application for early hearing of the main case.

Counsel for the respondents have no objection to the same being allowed.

In view of the averments contained in the application, which is supported by an affidavit and which are not objected too, the same is allowed.

With the consent of parties, main case is taken up for final hearing today.

CWP-8378-2023

Prayer in the present petition is for directing the respondents to declare the petitioner Mrs. Priya Mishra as legal guardian of her husband Sh. Vivek Rastogi (respondent No.2), who is incapable of taking any decisions or signing any documents.

Learned counsel for the petitioner contends that the petitioner is wife of respondent No.2, who is aged 55 years and is in a state of comatose vegetative stage, with no signs or prospects of revival. The petitioner from her previous marriage has two sons, who are major. The respondent No.2, on the other hand, has no children. The petitioner is residing in Gurugram ever since getting married with respondent No.2 on 07.10.2011. Her father-in-law (father of Vivek Rastogi-respondent No.2) had pre-deceased in the year 1988 while her mother-in-law (mother of Vivek Rastogi-respondent No.2) also passed away in March, 2020. It is submitted that respondent No.2-Vivek Rastogi is currently bed ridden with no capability to respond or react towards actions/motions on account of Hypoxic Brain Injury following the cardiac arrest suffered on 07.03.2023. He contends that respondent No.2 has a majority of shareholding in respondent No.3 Company and that the said business needs to be look after. There were several loans that have been availed by the said company from several banks and financial institutions, whose's 'EMIs' have been due or remained unpaid. Besides, there are various movable and immovable assets, the details whereof are extracted as under:-

S.No.	Movable items	Description	Cost (Rs.)
1.	4 cars	Maruti Swift, Santa Fe, Creta, BMW-3 series (all over 5 years old. BMW is over 10 years old)	15 lakhs approx.

2.	Mutual Funds Bank	Mutual Funds	11 lakhs
3.	Bank current account No. 201008021503, maintained at Indusind, Gopal Das Bhawan, Barakhumba, New Delhi	Current Account	Not known
4.	Bank Account No. 201008021503, maintained with Indusind Bank	Joint Account of petitioner and respondent No.2.	Not known
5.	Bank Account No. 510502010003361, maintained with Union Bank	Joint Account of respondent No.2 and Maya	Not known
6.	Bank Account No. 510502010010920, maintaing with Union Bank	Saving Account	Not known
7.	Bank Account No. 53110940371, maintained with Standard Chartered Bank	Saving Account	Not known
8.	Bank Account No. 53511077704, maintained with Standard Chartered Bank	Joint Account of petitioner and respondent No.2.	Not known
9.	Bank Account No. 054801510811, maintained with ICICI Bank	Saving Account	Not known
10.	Shares in D.N. Buildtech Private Limited	Shareholding of 76%	
11.	Shares in Q-Square Infra Management Private Limited	Shareholding of 62.31%	
	Immovable		
12.	Ivy Apartment at A-203, Sector 28, Gurugram, Haryana	4- bedroom house	5 crores
13.	Uniworld Apartment at A-1002, Sector 30, Gurugram	3-bedroom house	2.5 crores
14.	Manor One, at Dwarka Expressway, Sector 111, Gurugram, Haryana	2- bedrrom house-still under construction	80 lakhs approx.

It is also submitted that respondent No.2 was having multiple businesses and that there are pending personal liabilities that are required to be discharged. The detail of liabilities of companies in which respondent No.2 is a Director or a guarantor, are extracted as under:-

Secured Loan in the name of M/s Q-Square Infra Management Private Limited (amount in Rs.)- on personal property of respondent No.2.						
Sr. No.	**Bank/FI**	**Loan amount**	**EMI start date**	**EMI End Date**	**EMI**	**O/s as on 31.01.23**
1.	Indusind Bank	1,67,41,183	07.08.2021	07.08.2036	1,71,298	1,59,52,159
2.	Indusind Bank	1,03,00,000	26.02.2021	28.02.2031	1,55,000	84,16,296
3.	Indusind Bank	37,62,000	28.02.2022	28.02.2027	30,000	37,62,000
Total		4,13,96,023			5,75,498	3,72,65,175

Over draft limit in the name of M/s. Q-Square Infra Management Private Limited by mortgage o IVY Property					
Sr. No.	**Bank/FI**	**Amount Sanctioned**	**Amount Availed**	**Interest Amount (per month)**	**O/s as on 31.01.23**
1.	ICICI Bank	3,15,00,000	2,91,00,582		2,91,00,582
Total					2,91,00,582/-

Learned counsel for the petitioner contends that the financial institutions are after the petitioner for payment and for making good on the default of the EMIs, however, the petitioner cannot deal with properties or issue cheques against the bank accounts that have been maintained by or are in the name of respondent No.2, hence, she is facing huge financial difficulties. Additionally, she had also incurred medical expenses at Max Hospital, Gurugram to the tune of Rs. 11,62,000/-, Home Nursing Care of Rs.95,287/- in the month of March, 2023 alone. Various other expenses to the tune of Rs.15,22,000/- have been incurred for treatment apart from recurring household expense of Rs.1,00,000/- per month. It is also submitted that insurance claim has also been rejected twice for medical bills, which has added to the financial difficulties of the petitioner. Due to mounting medical and household expenses, the petitioner is facing acute difficulty in sustaining and ensuring medication for respondent No.2

On notice, reply by way of affidavit of Nishant Kumar Yadav, IAS, Deputy Commissioner, Gurugram was filed, wherein it was stated that a committee had been constituted to examine the health condition of respondent No.2 and to verify the property details of respondent No.2. The Sub Divisional Officer (Civil) Badshahpur, submitted his report vide memo no.256 dated 12.09.2023 giving the details of the properties. A report was also obtained from Tehsildar, Wazirabad. Report from Medical Board constituted by Principal Medical Officer, Civil Hospital, Gurugram, was also received as per which the patient respondent No.2 is a known case of Hypoxic Ischemic Encephalopathy post cardiac arrest since March, 2023 and at present, he is bed bound, Ryle's tube in situ, Catheterized, tracheostomised. It is also reported that the patient is unconscious and not following verbal commands and is in comatose state. A separate affidavit has also been filed on behalf of respondent No.6-Sub Registrar-V Ghaziabad, certifying that the marriage of the petitioner has been duly registered in the office of the Sub Registrar, Ghaziabad and that the said marriage was solemnized on 07.10.2011.

The counsel for the parties have reiterated the facts noticed above.

The facts raised by the petitioner being the wife remain undisputed and there is no report by the respondents that there is any other heir, issue or claim against respondent No.2-Vivek Rastogi.

In the given circumstances, there is no other person, who is immediately related to respondent No.2 and is in a capacity to take care of him.

Taking into consideration all the circumstances, I allow this petition. The petitioner is appointed as a guardian of her husband Vivek Rastogi and is authorized to operate the bank accounts/mutual funds accounts, shareholdings and deal with the financial affairs of Vivek Rastogi in the interest of justice. In the event, any immovable property is required to be disposed of in order to deal with the medical expenses of Vivek Rastogi, the same may be undertaken by the petitioner, however, the proceeds thereof shall be used in the following manner:-

(I) to settle the outstanding loan/arrears, if any, against the said property and to clear all pending liabilities/statutory dues against the same.

(ii) the balance shall be kept in a fixed deposit entitling the petitioner to utilize the interest accrued thereupon for meeting her day to day expenses.

The above permission is without prejudice to any claim of a 3rd party on the estate of Vivek Rastogi or any other restraint order that may have been passed by a Court or an authority.

20.04.2024 **(VINOD S. BHARDWAJ)**
monika **JUDGE**

Whether reasoned/speaking: Yes
Whether reportable: Yes/No