



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO. 4496 OF 2016

Nirmala Vinayak Dhormare

....Petitioner

VERSUS

Mirza Shamshoddin Pathan Died Through
Lrs Rajiya Mirza Pathan And Others

.....Respondents

.....

Mr. N.P. Patil Jamalpurkar, Advocate for the Petitioner
Mr. Santosh B. Gastagar, Advocate for respondents No. 1 to 5

.....

CORAM : MANJUSHA DESHPANDE, J.

DATE : 11th FEBRUARY, 2025

ORDER :

1. Petitioner is challenging the order dated 02.03.2016 passed by Civil Judge, Junior Division, Ausa, Dist. Latur below Exhibit-122 in Regular Civil Suit No. 13 of 2009, whereby application filed by petitioner under Order XXXII Rule 15 of Code of Civil Procedure has been dismissed.

2. Plaintiffs had filed Regular Civil Suit No. 13/2009 for declaration and perpetual injunction. In the said suit, defendant No. 4 is the husband of present petitioner. During the pendency of suit, application was filed by petitioner seeking permission to prosecute the suit on behalf of defendant No. 4 on the ground

that defendant No. 4 is mentally disabled.

3. It is the case of petitioner that defendant No. 4 was not in a position to defend himself in the suit, since, he is mentally disabled person. He had completed his education in a school meant for mentally disabled person. Therefore, in order to safeguard interest of defendant No. 4 she had sought permission to prosecute the suit on behalf of respondent No. 4. Petitioner has brought on record document Exhibit-117 through evidence of PW3. As per said document, defendant No. 4 was taking education in a school meant for mentally disabled children. She being wife of defendant No. 4, has prayed that she may be permitted in capacity of next friend of defendant No. 4 to prosecute the suit on behalf of defendant No. 4.

4. The application was resisted by plaintiffs by filing their say at Exhibit-126. It was the contention of the plaintiffs that only professional education of defendant No. 4 is done at the school meant for mentally disabled person. He has taken education at Hasegaon, Ausa and Ghonsi, Taluka- Udgir, in the school for normal children. Defendant No. 4 himself is working as caretaker in the school for mentally disabled children since 01.04.2000. In the present application, defendant No. 4 is

Bhagyawant Punde

claimed to be mentally disabled person. It was further contended that defendant No. 4 is earning Rs. 12,000/- per month. In the earlier proceeding i.e. R.C.S. No. 57/2004, though permission was granted to prosecute the proceeding through next friend, no document was brought on record by the petitioner to show that defendant No. 4 is of unsound mind. The decree in R.C.S. No. 57/2004 has been obtained ex-parte, by playing fraud. Initially, defendant No. 4 has himself appeared in the Court and filed his written statement on 04.05.2009. Thereafter, application for filing vakalatnama through the next friend was filed on 16.07.2009.

5. On the basis of rival pleadings, Civil Judge, Junior Division, Ausa has decided the application holding that in order to prove that defendant No. 4 is unsound mind, the plaintiff has examined Shri. Kulkarni (PW3), who has deposed that he is working as Headmaster at Jeevan Vikas Prasthian's school for mentally disabled children at Latur. He deposed that defendant No. 4 is working as caretaker in the said school since 2000. In order to secure job in the said school as caretaker, mental examination certificate has been obtained to show that he is mentally fit for the service and it is also certified that defendant

No. 4 is not having physical or mental disability at the age of 29 years. PW3 has also deposed that defendant No. 4 was taking education in Sambhaji Vidhyalay, Ghonsi till 9th standard, which is supported by school leaving certificate at Exhibit-113 and 114 which show that defendant No. 4 was not studying in the school for mentally disabled children till 9th standard. The certificate issued by Headmaster of Mati Mand Vidhyalay, Latur shows that defendant No. 4 was taking education in the workshop course between 24.06.1993 to 10.06.1996. Therefore, as per record defendant No. 4 does not seem to be suffering from any mental illness and he is not physically disabled person. Therefore, it cannot be said that he is incapable of protecting his interest and therefore denied the permission to prosecute the proceeding through next friend.

6. Order XXXII Rule 15 of CPC is reproduced herein below.

"15. Rules 1 to 14 (except rule 2-A) to apply to persons of unsound mind- Rules 1 to 14 (except rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of suit, to be unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued."

7. After hearing the parties and after perusing the impugned order, it is clear that the plaintiffs have proved that defendant No. 4 was neither of unsound mind nor physically disabled person. PW3 has deposed he was working as Headmaster in the said school, where defendant No. 4 has been employed as caretaker since 2000. Defendant No. 4 is not only employed in the said school, but he is earning Rs. 12,000/- per month. Though reference is made to the earlier proceeding i.e. R.C.S. No. 57/2004, wherein the petitioner was allowed to prosecute the proceeding as next friend of defendant No. 4, it is contended that the decree has been obtained ex-parte and nothing was brought on record to prove that defendant No 4 was of unsound mind.

8. So far as present proceeding is concerned, petitioner filed application for seeking permission as provided under Order XXXII Rule 15 and has failed to prove that defendant No. 4 is incapacitated on account of unsound mind, to take care of his interest in the suit. Therefore, I do not find any infirmity or error in the impugned order. The impugned order is perfectly in consonance with the scope of Order XXXII Rule 15 and no case is made out by the petitioner to interfere with the order. The writ

petition is therefore dismissed.

9. Considering the time spent in prosecuting the present writ petition and the stay granted by this Court, the Civil Judge, Junior Division, Ausa is requested to expedite the suit and decide it as early as possible.

(MANJUSHA DESHPANDE, J.)