

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1144 OF 2024.

Sanjay S/O. ShankarraoPuppal,	]	
Age : 63 years, Occu. : Retired,	]	
R/o. 137, Modikhana, Solapur.	]	
(REPRESENTED THROUGH HIS POWER OF	]	
ATTORNEY HOLDER:	]	
Shankar s/o. SharnappaDharne,	]	
Age : 68 years, Occu. : Ex-steno of District Court,	]	
Solapur, R/o. 174, "Suprita Arcade", KumbharVes,	]	
Solapur	]	<u>...Appellant.</u>

Versus

1. The State of Maharashtra	]	
(Notice be served on Government Pleader)	]	
Bombay High Court Annex, Bombay High	]	
Court, Area, Mumbai) At :- Mumbai	]	
2. The Superintendent of Regional Mental	]	
Hospital, Yerwada, Pune,	]	
R/o Vishrantwadi, Phule Nagar, Near R. T. O.	]	
Office, Pune – 411006.	]	<u>...Respondents.</u>

Ms. Lizum C. Wangdi, Amicus Curiae for Appellant.
Mr. A. R. Patil, AGP for Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : 12th February, 2025.

Oral Judgment :

1. The First Appeal has been preferred by the Power of Attorney holder appearing in-person against the judgment dated 11th January, 2024 passed in Civil Miscellaneous Application No. 213 of 2022. When

the matter was listed before this Court, by order dated 19th December, 2024, Ms. Wangdi was appointed as *amicus curiae* to assist the Court.

2. The facts of the case is that the Applicant filed an Application before the District Court purportedly under Section 53 of the Mental Health Act, 1987 seeking appointment of Respondent No. 1, which was the State of Maharashtra as a de-facto guardian. The case pleaded was that the patient was a person with disability and was maintained by her brother-in-law. It was pleaded that the mental health expert of Civil Hospital has declared the patient as mentally ill and had opined that her detention in Regional Mental Health Hospital is necessary, which was subsequently permitted by order of Chief Judicial Magistrate. As the Applicant received intimation about the possibility of patient being discharged from the hospital, the Application came to be filed.

3. The District Court framed the issue as regards the maintainability of Application and answered the same against the Applicant in view of enactment of Mental Healthcare Act, 2017, which is impugned in the present case.

4. Learned *Amicus Curiae* would submit that though the Application was filed under Section 53 of the Mental Health Act, 1987, the nomenclature of the Application was not important and the District Court could have exercised the jurisdiction under the Mental Healthcare Act, 2017, which provides for appointment of nominated

representative under Section 14. She submits that in the present case what is necessary is proper care and custody of the patient, and discharge by Regional Mental Hospital, Yerwada without making any provision for the patient's rehabilitation and without any nominated representative would be detrimental to the patient. She submits that patient need to be rehabilitated by applying the doctrine of *Parens Patriae* and proper arrangements be made for the treatment as well as the post-treatment care and custody of the mentally ill patient. She submits that it is evident from the facts on record, that there is no person, who is willing to act as guardian of the mentally ill patient and therefore, Section 14 of the Mental Healthcare Act, 2017 needs to be invoked and as per Section 14(4), if the relative is not willing to be the nominated representative then it is the Director, Department of Social Welfare or his designated representative, as the nominated representative of a patient. In support, she relies upon the decision in the case of ***Dr. Harish Shetty vs. State of Maharashtra***¹, wherein Division Bench of this Court issued certain instructions for treatment as well as rehabilitation of the mentally ill patients. She submits that the guidelines provide for discharge of patients from mental health establishment to either their family homes or the rehabilitation centre/halfway homes, and the procedure to be followed after such

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discharge and rehabilitation. She submits that similar procedure can be adopted in the present case by appointing the Director, Department of Social Welfare as the nominated representative and thereafter, to provide for rehabilitation, in event, the medical opinion is that the patient is fit to be discharged from the hospital.

5. As this is not an adversial litigation, Mr. Patil, learned AGP has extended all support to ensure that proper instructions are received from the Department of Social Welfare and he submits that the Department of Social Welfare has already approved the list of Non-Governmental Organizations, which are willing to take care of such patients after their discharge from the hospital. He submits that one such establishment was Shantiban Pratishtan, Pune, in which the patient was earlier admitted and was thereafter, admitted once again to mental health establishment for treatment. He submits, upon instructions, that proper order can be passed for rehabilitation of patient in Shantiban Pratishtan, Pune after her discharge from the Mental Health Establishment.

6. Considering the above, an opinion was sought from the Regional Mental Health Establishment by this Court and the medical report dated 3rd February, 2025, states that with the permission of Mental Health Review Board, Pune, on 12th December, 2024, the patient was transferred to Shantiban Rehabilitation Center till 20th January, 2025

and thereafter, she was readmitted to the Mental Health Establishment, Pune for fresh evaluation. The report by three-member committee of the Psychiatrist and the Medical Superintendent has opined that the patient currently has only residual symptoms of psychosis and her treatment is being continued at the Regional Mental Health Establishment and that her physical health is stable. Considering the recent report, it appears that it is not necessary for her continued admission in the Regional Mental Health Establishment.

7. The issue is whether the powers are required to be exercised under Section 14(4) of Mental Healthcare Act, 2017 for appointing a nominated representative.

8. The Trial Court has rejected the application on the ground of maintainability as nothing had been produced on record that the regional mental health establishment is not ready to keep the patient in the Hospital. What was required to be considered is the necessity of appointing nominated representative for the patient considering the relief sought in the Civil Miscellaneous Application. The provisions of Section 14 of the Mental Healthcare Act, 2017 deals with the appointment and revocation of nominated representative. Sub-section (4) of Section 14 provides that where no nominated representative has been appointed by the person under sub-section (1) and if no person is available to be appointed as a nominated representative, the Board

shall appoint the Director, Department of Social Welfare, or his designated representative as a nominated representative of the person with mental illness. Section 17 provides for the duties of nominated representative, which includes providing support to the person with mental illness in making treatment decisions under Sections 89 and 90, applying to the mental health establishment for admission and giving consent for the same.

9. The pleading in the Application is that parents of the patient have expired. The elder sister and brother have expired and no relative is willing to take care of the patient. Considering the provisions of Section 14(4), as there is no relative, which is available or willing to be a nominated representative of the patient, the Director, Department of Social Welfare is directed to designate a representative as nominated representative of the patient within a period of 15 days from today. Upon the Representative being so nominated, the Representative shall make necessary applications to the Mental Health Establishment and after obtaining their opinion, and if so advised, to obtain discharge of patient from the Mental Health Establishment and ensure her rehabilitation with Shantiban Pratishthan, Pune. In event, any readmission is required, it will be the duty of nominated representative to take all proper steps to ensure that there is full treatment given to the patient by admitting her to the Regional Mental Health

Establishment, and upon discharge, to ensure her rehabilitation with Shantiban Pratisthan, Pune.

10. In the case of ***Dr. Harish Shetty*** (supra), this Court had passed the necessary directions for framing of comprehensive plan/protocol for rehabilitation of cured patients and in the meantime, the draft comprehensive plan, which is stated in Paragraph No. 88 of the said decision is required to be followed. These said directions include two categories, i.e. Category-A-those whose relatives are existent and Category-B-those whose relatives are not known. In the present case, the patient will fall in Category-A and all that is required is that after her discharge, the patient be rehabilitated in the Non-Governmental Organizations, which are empanelled with Director, Department of Social Welfare. The directions issued by Public Interest Litigation is binding on the authorities and it is expected that the authorities will comply with the same.

11. In light of the above, First Appeal is allowed and the following order is passed :

: O R D E R :

[i] The Director, Department of Social Welfare is directed to designate a representative as a nominated representative under Section 14(4) of the Mental Healthcare Act, 2017 within 15 days from today.

[ii] In event, the designated representative is unable to function as a nominated representative for any reason whatsoever, before discharging the said nominated representative, an alternate arrangement shall be made by Director, Department of Social Welfare for appointment of new nominated representative.

[iii] Upon being so appointed, the nominated representative to take necessary decision in consultation with the Regional Mental Health Establishment, Yerwada regarding the discharge of patient.

[iv] In event, the medical opinion is that patient can be discharged with regular follow-ups, then the nominated representative to take proper steps to ensure her rehabilitation in Shantiban Pratishtan, Pune.

12. Before parting, this Court records its appreciation towards the assistance, which is rendered by Ms. Wangdi, learned *Amicus Curiae* without whom this Court would not have been able to pass an effective order particularly, considering the sensitive nature of the present proceedings.

[Sharmila U. Deshmukh, J.]