



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5155 OF 2024

Bipin Thakurlal Mistry

.....Petitioner

Vs.

1. Union of India
2. State of Maharashtra
3. Kejal Swapnil Shah
4. Bhoomi Chirag Shah
5. Dhruv Bipin Mistry

.....Respondents

Mr. Pranit Kulkarni i/b Jayant Gaikwad, for the Petitioner.

Mr. K. B. Dighe, for U.O.I

Smt. Prachi Tatake, Addl. GP, for Respondent No.2-State

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATE : 6th March 2025

ORDER:- (Per Dr. Neela Gokhale, J.)

1. By this Petition, the Petitioner seeks a direction to declare the Petitioner to act as a legal guardian of his wife-Smt. Mayuri Bipin Mistry, who is suffering from acute hydro cephalous with collied cyst in brain and is in a vegetative state, so as to enable the Petitioner to administer her movable and immovable properties including operation of her bank account and to manage her other properties. The Petitioner is the husband of Smt. Mayuri and the Respondent Nos.3 to

5 are her daughters and son respectively. Respondent No.1 is the Union of India and the Respondent No.2 is the State of Maharashtra.

2. By an order dated 20th February 2025, this Court had directed the Authorities of the Grant Government Medical College & Sir J.J. Group of Hospitals, Mumbai to nominate a Neurologist from the Department concerned to examine the physical and mental health of Smt. Mayuri and submit a report to this Court on or before 6th March 2025. Accordingly, today Dr. Kamlesh A. Jagiasi, Professor and Head, Department of Neurology of Sir J.J. Group of Hospitals, Mumbai has submitted a report dated 5th March 2025 in respect of Smt. Mayuri. The Report is taken on record and marked 'X' for Identification. The report is signed by Dr. Kamlesh. The impression recorded in the report states that she suffers from acute hydrocephalous with collied cyst in brain. The conclusion of the Report reads as thus;

“At present, on examination I found out that she has tracheostomy tube to facilitate breathing, percutaneous endoscopic gastrostomy (PEG) tube to facilitate feeding, she cannot speak, she cannot understand, she winces on pain. She has rigidity in all 4 limbs. She cannot move them on her own. She is in vegetative state and is totally dependent on

care giver for her activities of daily living. She cannot take any decision. She cannot give informed consent.”

3. The Report of Dr. Kamlesh Jagiasi confirms the averments made in the Petition; that Smt. Mayuri is 63 years old and that she is in a vegetative state and totally dependent on a care giver for her daily activities. She is unable to take any decision and cannot provide informed consent.

4. Mr. Pranit Kulkarni, learned counsel appears for the Petitioner. Mr. K. B. Dighe, learned counsel appears for the Union of India and Ms. Prachi Tatake, learned Additional Government Pleader represents the State. The Respondent Nos.3 to 5 are present before the Court today and have filed their Affidavits of Consent dated 17th October 2024 duly affirmed before a Notary Public. All of them have given their consent and have no objection to the appointment of the Petitioner as legal guardian of said Smt. Mayuri. We have interacted with them personally and we are satisfied that these Respondents have understood the connotations of the Petition and consent to the same.

5. We have heard the parties and perused the record with their assistance.

6. We have considered the submissions made by the parties. The Petitioner and Smt. Mayuri were married on 16th April 1984 and they have three children, i.e., the Respondent Nos.3 to 5. Because of her ailment, Smt. Mayuri transitioned into a comatose stage and her condition remains unaltered till date. The Petitioner has a joint saving bank account No.16570100003105 with Smt. Mayuri in UCO Bank, Kandivali (West), Mumbai. She also has 1/3rd share in immovable property comprising of residential flat No.2882, Building No.96 known as 'Ghatkopar Avadhoot Co-operative Housing Society Ltd.', 96/2882, Pant Nagar, Ghatkopar (East), Mumbai – 400 075. This property belonged to her father.

7. Considering the legal and factual position, more particularly, the Report submitted by Dr. Kamlesh Jigiasi of Sir J.J. Group of Hospitals, we do not have any hesitation in granting appropriate relief sought by the Petitioner in terms of prayer clause (a) and (c) which read as thus;

“(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction in the nature of Writ of Certiorari declaration that the Petitioner Bipin Thakurlal Mistry as the guardian of his wife Mayuri Bipin Mistry who

is in comatose condition;

(c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction in the nature of Writ of mandamus directing the Respondents as well as all the concerned banks, depository, finance institutions, society etc., to allow the petitioner to operate/represent with the affairs of Mayuri Bipin Mistry in terms of finance, on such terms and condition as deem fit o this Hon'ble Court;"

8. We thus, appoint the Petitioner as legal guardian of the person of Smt. Mayuri. He shall also act as legal guardian of her movable and immovable properties subject to following conditions:

(a) The Petitioner may draw on the joint account in UCO Bank held in the name of Smt. Mayuri and himself but only for the purpose of meeting her needs. The Petitioner shall not effect any transfers, gifts or other distributions to himself or to any other family members, save and except for the needs of Smt. Mayuri as permitted here-in-above, without prior leave of the Court.

(b) The Petitioner is also permitted to manage the share of Smt. Mayuri in the immovable property described herein above or deal with it in any manner, in the best interest of Smt. Mayuri. The Petitioner is, however, not permitted to transfer or alienate the said share of Smt.

Mayuri without the consent of this Court or a Court of competent jurisdiction. All or any income from the said property shall be deposited in the saving bank account with the UCO Bank as aforesaid and shall be used only for the needs of Smt. Mayuri. In case circumstances arise, where the Petitioner is required to transfer the said share in the property, the Petitioner is at liberty to make an Application to this Court or a Court of competent jurisdiction to seek permission for the same.

9. The Petition stands disposed of accordingly.
10. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.) (REVATI MOHITE DERE, J.)