

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1295 OF 2026

Porus H Daruwala

...Petitioner

V/s.

Raty Darabshah Jokhi And Anr.

...Respondents

Mr. Vivek Kantawala *a/w Mr. Vivek M. Sharma, Mr. Manav Kantawala i/b Jash B Vyas for Petitioner.*

Mr. Subhash P. Nalavade *for Respondent No. 1.*

CORAM: SANDEEP V. MARNE, J.

DATED: 15 APRIL 2026.

P.C.:

1) The challenge in the Petition is to the order dated 24 November 2025 passed by the learned Judge, Small Causes Court allowing the Application at Exh-72 filed by Ms. Amy Nozar Irani for appointing her as next of kin of the Plaintiff.

2) I have heard Mr. Kantawala, the learned counsel appearing for Petitioner and Mr. Nalavade, the learned counsel appearing for Respondent No. 1.

3) Perusal of the impugned order dated 24 November 2025 would indicate that learned Judge has not conducted the inquiry

contemplated under Order XXXII Rule 15 of the Code of Civil Procedure, 1908. Instead what the learned Judge has relied upon is mere finding recorded in the order dated 10 July 2023 while rejecting Application at Exh-51. The Application at Exh-51 was filed by Ms. Amy Nozar Irani, who is constituted attorney of the Plaintiff seeking permission to file fresh affidavit of evidence by withdrawal of affidavit of evidence of Plaintiff. While rejecting the Application, it appears that the learned Judge has made a stray observation that the Plaintiff suffers from cognitive disability which means persistent mental illness. The scheme of Order XXXII Rule 15 of the Code is that if a party to the suit is not of unsound mind, but the Court, on conducting an inquiry, arrives at a conclusion that by reason of any mental infirmity, the party is incapable of protecting its interest in the suit, the Court can make necessary order under Rules 1 to 14. Therefore, for application of provisions of Order 32 Rule 15 of the Code, it is not necessary to demonstrate that the Plaintiff is of unsound mind. What needs to be demonstrated is that due to some mental infirmity, the Plaintiff is not in a position to protect his/ her interest in the suit. That finding can be recorded by the Court only after conduct of an inquiry. In the present case, such an inquiry is apparently not conducted. The learned judge has erroneously assumed that an inquiry envisaged under Order 32 Rule 15 of the code has been conducted while passing order dated 10 July 2023, which is actually not the case.

4) The impugned order is thus unsustainable and liable to be set aside. The proper course of action would be examination of the Plaintiff by the Trial Court for the purpose of reaching the satisfaction as

contemplated under Order 32 Rule 15 of the Code. In case the Court comes to a conclusion that Plaintiff is unable to protect her interest in respect of the suit, the Court shall proceed to appoint Respondent No. 2 as next of kin of the Plaintiff. The order dated 24 November 2025 is accordingly set aside. However, it would be open for the Plaintiff to appear before the Trial court and the Trial Court shall conduct an inquiry as envisaged under Order 32 Rule 15 of the Code for making necessary order in the suit.

- 5) All contentions of the parties are expressly kept open.
- 6) Writ Petition is partially allowed with above directions and disposed of.

[SANDEEP V. MARNE, J.]