TRUSHA TUSHAR MOHITE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 7079 of 2025
IN
GUARDIANSHIP PETITION NO.9 OF 2024

Pinky Rajesh Patil .. Applicant

In the matter between

Shubhangi Kamlesh Navalkar (nee Patil) .. Petitioner

Versus

Rajesh Dwarkanath Patil .. Respondent

And

Pinky Rajesh Patil .. Applicant

Mr. Rustom Pardiwalla a/w. Mr Rushabh Thacker, Mr. Pankaj Bajaj i/b. Mr Rushabh Thacker, for the Applicant in IA/7079/2025.

Mr. Karl Tamboly a/w. Mr. Bhavin Shah a/w.Mr. Bharat Manghani i/b. Ms. Drushti Gala, for the Respondent / Petitioner in GP/9/2024.

CORAM: **FIRDOSH P. POONIWALLA, J.**
RESERVED ON: **2nd APRIL 2026**
PRONOUNCED ON: **30th JUNE 2026**

JUDGEMENT:

1. By an Order dated 24th April 2024 passed by this Court in Guardianship Petition No.9 of 2024, this Court appointed Shubhangi Kamlesh Navalkar (the Petitioner) as the guardian in respect of the person and property of her brother Rajesh Dwarkanath Patil (the Respondent).

2. The present Interim Application is filed by Pinky Rajesh Patil (the Applicant), claiming to be the wife of Rajesh Patil, for the following final reliefs:

> *"(a) The order dated 24.04.2024 passed in Guardianship Petition No. 9 of 2024 be recalled and the Petitioner be removed as a guardian of the Respondent;*
>
> *(b) The Respondent be ordered and directed to be discharged from Anandvan Wellness Center, Virar (West) and the Applicant be granted custody of the Respondent;*
>
> *(c) The Petitioner be ordered and directed to hand over the keys of shared household, i.e., "Rajesh" A/1, 2, 3 3rd Floor, 107, JP Road, Opp. Navrang Cinema, Andheri (West) and also to hand over all the personal documents, i.e., the original bank passbooks, original fixed deposits, original mutual fund certificates, original National Savings Certificates (described in Exhibit-F to the guardianship petition), original UTI Mastershare Portfolio No. 5141561366 certificate, original Aadhar new original Voter ID issued by Election Commission of India, original I.T. papers, G.S.T. papers and Property Tax papers and the documents executed with Axis Bank with regard to tenancy/Licensee granted to Axis Bank for the Ground Floor of Rajesh Building situated at 107, J.P. Road, Andheri (West), Mumbai 400 058;*

(d) The Petitioner be ordered and directed to disclose on affidavit the income derived from the plot situated on land bearing CTS No. 142, 142A, 142B, 142C, 142D (D/2 & D/3) situated in Village Andheri, Taluka Andheri, Mumbai Suburban District;

(e) The Petitioner be ordered and directed to disclose on affidavit the income earned from the tenants of "Rajesh" Building, including by way of rent and mesne profits and to transfer the said income in the personal Bank Account No. 1196708879 with Post Office Savings Bank with Khar Branch, of the Respondent;

(f) The Petitioner be ordered and directed to disclose on affidavit the expenses incurred by her from 24.04.2024 till date towards the Respondent including the medical expenses and other miscellaneous expenses and to produce all the supporting documents thereof;

(g) The Petitioner be ordered and directed to disclose on affidavit the treatment administered to the Respondent after 02.03.2024 by various hospitals, rehab centers and wellness centers and other private doctors and to annex all the medical reports and prescriptions issued by the hospitals, rehab centers and wellness centers and other private doctors along with her affidavit."

SUBMISSIONS OF THE APPLICANT

3. Mr. Rustom Pardiwalla, the learned counsel appearing on behalf of the Applicant, made submissions in support of the Interim Application. The Applicant also filed documents, Compilation of Judgements and Written Submissions.

4. Mr. Pardiwalla submitted that the Applicant is the legally wedded wife of the Respondent. The marriage between the Applicant and the Respondent was solemnized at Mumbai, on 8th March 2018, as per the Hindu Vedic Rites.

5. Mr. Pardiwalla submitted that the Guardianship Petition came to be filed by the Petitioner before this Court claiming guardianship of the Respondent's person and property purportedly on the grounds that the Respondent, since birth, has experienced mental disability and the Petitioner is the only relative of the Respondent. Mr. Pardiwalla submitted that, though it was falsely claimed in the Guardianship Petition that the Respondent was suffering from a mental disorder since 1970, there was no trail of medical reports to substantiate that the Respondent was having any mental disorder since the 1970s, as alleged in the Guardianship Petition. In fact, the Guardianship Petition was purely based on the purported certificate issued by Dr. Rohit Singh dated 15th March 2024 (Page 97 of IA). The filing of the Guardianship Petition by the Petitioner, within a span of one month from the issuance of the so-called certificates at the instance of the Petitioner, reveals the malicious intent of the Petitioner to procure the Guardianship Order behind the back of the Applicant hurriedly, so that the Petitioner could succeed in misusing the said Order for her benefit.

6. Mr. Pardiwalla submitted that the Guardianship Petition proceeds on knowingly false and misleading statements made by the Petitioner deliberately with an ill intent to procure the order of guardianship, which are as under :

(a) In paragraph 1 of the Guardianship Petition, it has been falsely stated that the Respondent is the unmarried younger brother of the Petitioner.

(b) In paragraph 4.1 of the Guardianship Petition, it has been alleged that, since birth, the Respondent has experienced mental disability and slow physical development.

(c) In paragraph 4.2 of the Petition, it has been alleged that, despite the efforts to improve his mental health, no significant progress could be made. In early 1970s, the doctor, taking note of his mental disorder, had prescribed medication for his psychiatric condition.

The Respondent was incapable of managing his affairs and had always relied on his parents' care and had never married.

(d) In paragraph 4.4 of the Petition, it has been alleged that, despite efforts, the Respondent's condition remained unchanged, though there had been minor improvement in his health.

(e) In paragraph 4.8 of the Petition, it has been again reiterated that the Respondent has only one near relation, the Petitioner, i.e., his sister and that the Respondent is unmarried and does not have any children.

7. Mr. Pardiwalla submitted that, after the filing of the Guardianship Petition, the Petitioner procured a Certificate on 15th April, 2024 from Dr. R N Cooper Hospital (at Page 104 of the IA) to support the false claim of the Petitioner that the Respondent is suffering from mental

illness. Even the so-called Certificate issued by Dr. RN Cooper Hospital is based on oral diagnosis by the Petitioner and there are no supporting reports annexed to the said Certificate.

8. Mr. Pardiwalla submitted that it was on this basis that the Petitioner obtained the Order dated 24th April 2024 in the Guardianship Petition.

9. Mr. Pardiwalla submitted that the Applicant, upon realizing about the Order dated 24th April, 2024, fraudulently obtained by the Petitioner, appointing her as the guardian of the Respondent, filed the present Interim Application for the removal of the Petitioner as the guardian and seeking other reliefs as more particularly prayed for in the Interim Application

10. Mr Pardiwalla submitted that the so-called contention of the Petitioner in the Guardianship Petition, that the Respondent is the unmarried younger brother of the Petitioner, and there is no other relative of the Respondent except the Petitioner, is an ex-facie false statement in view of

the fact that the Applicant and the Respondent are married and the said fact was very well within the knowledge of the Petitioner as is evident from the police complaint (annexed at Page 265 of the IA) filed by the Petitioner which bears her signature. The said complaint clearly shows that the Petitioner was aware of the marriage of the Applicant and the Respondent in March 2018.

11. Mr. Pardiwalla submitted that the following facts demonstrate that the Respondent was not having mental illness but was in a sound state of mind:-

a) A suit came to be filed before this Court, being Suit No. 1330 of 1980, by one M/s. G B Construction against Dwarkanath Anandrao Patil (father of the Petitioner and the Respondent), Rajesh Dwarkanath Patil (Respondent) and Shubhangi Dwarkanath Patil (Petitioner) claiming a decree for specific performance of an Agreement dated 22nd November, 1977. During the pendency of the said suit, Dwarkanath Anandrao Patil expired and the Petitioner and the Respondent continued as the legal heirs and representatives of their late father and defended the said suit. Judgement and order came to be delivered by this Court on 11th January, 2008, wherein the Court

has observed in paragraph 2 (Page 83 of the compilation of documents tendered by the Applicant on 7th April, 2026) as under:

> "2. ..... According to the plaintiff, the confirmation was sought from the defendants which was accorded by them by putting their signatures in confirmation and acceptance of the terms and conditions as set out in the said letter dated 22nd November, 1977."

In paragraph 5 of the Judgement, the Hon'ble Court has recorded as under.

> "5. On being summoned, defendants appeared and filed their written statement."

Furthermore, in paragraph 13 of the Judgement, the Court has placed reliance on a letter dated 22nd November, 1977 which bears the signatures of all the three

Defendants to the suit, including the Respondent.

b) Petition No. 630 of 2006 came to be filed on 28th July, 2006 before this Hon'ble Court, in its Testamentary and Intestate Jurisdiction, for letters of administration to the properties and the credits of Late Dwarkanath Patil (father of the Petitioner and the Respondent), jointly by the Petitioner and the Respondent (Pages 127 to 160 of the IA). The said Petition has been duly signed and verified by the Respondent jointly with the Petitioner (Pages 136 to 138 of the IA).

c) Joint affidavit of the Petitioner and the Respondent, duly affirmed on 28th July, 2006, in support of the letters of administration.

d) Grant was issued on 28th February, 2008 jointly in favour of the Petitioner and the Respondent (Page 160 of the IA) by this Court in the said Testamentary Petition.

e) Legal Notice dated 1st September, 2005 came to be addressed by Advocate Vikas Y Murudkar jointly on the instructions of the Petitioner and the Respondent (Page 161 of the IA) for evicting the tenant, Central Bank of India, from the premises occupied by it in "Rajesh" Building, 107 JP Road, Andheri (West).

f) T.E. & R. Suit No. 6/7 of 2006 (Page 165 of the IA) came to be filed on 25th January, 2006 jointly by the Petitioner and the Respondent for evicting Central Bank of India from premises occupied by it in "Rajesh" Building. The said suit was jointly signed and verified by Petitioner and the Respondent and further reverified (Page 175 of the IA) by the Respondent in March 2006.

g) Affidavit-in-reply dated 18th August, 2006 duly affirmed by the Respondent to Exhibit-10 in T.E. & R. Suit No. 6/7 of 2006 (Pages 185 to 188 of the IA).

h) Mesne Profits Application No. 1 of 2009 in T.E. & R. Suit No. 6/7 of 2006 jointly filed by the Petitioner and the Respondent as can be seen from the Judgement and Order passed by the Court of Small Causes at Mumbai (Bandra Branch) on 20th January, 2011 (Pages 189 to 196 of the IA).

i) Judgement dated 30th January, 2013 delivered in Miscellaneous Appeal No. 68 of 2011 filed by the Central Bank of India against the Petitioner and the Respondent jointly (Pages 197 to 213 of the IA).

j) Civil Application No. 616 of 2018 in Civil Revision Application No. 1018 of 2014 filed before this Court in its Civil Appellate Jurisdiction jointly by the Petitioner and the Respondent as is evident from the Orders passed by this Court from time to time (Orders annexed at pages 215 to 220).

k) R.A.E. Suit No. 540/814 of 2011 jointly filed by the Petitioner and the Respondent in the Court of Small Causes at Mumbai (Bandra Branch), duly affirmed on 15th December, 2011, for eviction of tenant, viz., Sanjay H Adani. In the said suit, the Petitioner led her evidence and she was subjected to cross-examination. In her cross-examination, she has admitted that "There are two landlords of the suit building, i.e., the Plaintiffs." She has further admitted in the cross-examination that "There is no dispute between her and the Respondent." There is further admission in her cross-examination that she is withholding the evidence of Plaintiff No. 1 (the Respondent) because she is afraid that he will reveal the truth.

l) Shri Anand Kamlesh Nawalkar, son of the Petitioner, also led evidence in the aforesaid suit and he was cross-examined by the other side and, in his cross-examination conducted on 12th November, 2021, he categorically admitted that Plaintiff No. 1, Rajesh Dwarkanath Patil (the Respondent herein) is well today and

Plaintiff No. 1 can do his daily activities properly (Pages 221 to 250 of the IA).

m) R.A.E. Suit No. 435/714 of 2012 came to be filed in the Court of Small Causes at Mumbai (Bandra Branch) jointly by the Petitioner and the Respondent, duly affirmed on 17th August, 2012, for evicting the tenant, viz., Chandrabhushan Rajnarayan Tiwari and others from "Rajesh" Building premises (Pages 251 to 261 of the IA).

n) Copy of one of the rent receipts dated 14th September, 2006 duly signed and issued by the Respondent (Page 262 of the IA).

o) Copy of the Leave and License Agreement dated 6th November, 2020 executed jointly by the Petitioner and the Respondent as the Licensors and Axis Bank Ltd. as the Licensee, which was duly registered with the Office of the Sub-Registrar of Assurances at Andheri, Mumbai Suburban

District (Pages 1 to 25 of the compilation of documents tendered by the Applicant on 7th April, 2026).

p) Copy of the post office savings account (Khar Colony) highlighting the operation of account by the Respondent by withdrawing the funds for repairs and renovations of the flat during the years 2022 to 2024 (Pages 64 to 70 of the compilation of documents tendered by the Applicant on 7th April, 2026)

12. Mr. Pardiwalla submitted that the Petitioner resisted the IA by filing her Affidavit-in-Reply. The Petitioner did not give any valid and proper explanation to the stand taken by the Applicant and the defence taken by the Petitioner in her Affidavit-in-Reply is highly vague, misconceived and without any merits. In Paragraph 14 of the Affidavit-in-Reply (Page 479), a vague and absurd stand is taken to the effect that the Petitioner wanted to preserve the Respondent's legal and proprietary rights. This itself reveals that the Petitioner has accepted the fact that the Respondent was a joint signatory to the legal proceedings initiated in this Court and before the Court of Small Causes at Mumbai (Bandra Branch), which clearly proves that the

Respondent was not having any mental illness since the year 1970, as falsely claimed in the Guardianship Petition.

13. With regard to the contention of the Applicant that the Petitioner was aware of the marriage between the Applicant and the Respondent, Mr. Pardiwalla submitted that the said fact is also not seriously disputed by the Petitioner as can be seen from paragraph 20 of the Affidavit-in-Reply (Page 492). Mr. Pardiwalla submitted that, on the contrary, in paragraph 20, the Petitioner has admitted that she was informed about the marriage, but was not shown or served with any documentary evidence in support of the Applicant's claim of marriage. Moreover, in the said paragraph, the Petitioner has also admitted about the filing of complaint with the police in which she has categorically admitted that she came to know about the marriage of the Applicant and the Respondent in March 2018.

14. Mr. Pardiwalla referred to the Affidavit in Rejoinder filed by the Applicant. Mr. Pardiwalla submitted that with regard to the so-called Affidavit of Mr. Ankush Shikhare, the Applicant has taken a categorical stand in her Rejoinder that the deponent-Ankush Shikhare had made a false statement in his Affidavit to the extent that his shop is situated in Laxman

Jhula Building from 1960 to 2003. Mr. Pardiwalla submitted that the Applicant has taken a categorical stand in the Rejoinder that she is very well aware and it is within her personal knowledge that Laxman Jhula Building came into existence in the year 1980, and not 1960, as falsely claimed in the Affidavit. Mr. Pardiwalla submitted that it has been further stated in the Rejoinder that, in paragraph 9 of the Affidavit of Ankush Shikhare, he has falsely claimed that he has placed on record the facts which are within his personal knowledge by virtue of his uninterrupted residence of the same building and familiarity with the family of Dwarkanath Patil. Mr. Pardiwalla state that the Applicant has further stated in her Rejoinder that Ankush Shikhare had never resided in the Rajesh Building, as falsely claimed in his Affidavit, and that the said fact can very well be established by the contents of paragraph 2 of his Affidavit.

15. Mr. Pardiwalla submitted that it was further stated in the Rejoinder that Ankush Shikhare was trying to help the Petitioner in her wrongful deeds. In fact, the said Ankush Shikhare is a cobbler by work and was owning a shoe shop next to Rajesh Building till 2003. Thereafter, he shifted somewhere else and has absolutely no personal knowledge of the Respondent. Mr. Pardiwalla submitted that it is further stated in the Rejoinder that the Affidavit of Shikhare reveals that he is not familiar with

the English language, and the authenticity of the contents of his Affidavit are highly doubtful. Even otherwise, the said Deponent is nobody to depose on the so-called mental condition of the Respondent.

16. Mr. Pardiwalla submitted that, with regard to the Affidavit of Mr. Mahindra Mhatre, the Applicant has taken a categorical stand in her Rejoinder that the said deponent has falsely deposed in his Affidavit that he has never seen the Applicant and the Respondent together. The said Mr. Mahindra Mhatre is a tenant of Rajesh Building and he was well aware that the Applicant is the legally wedded wife of the Respondent. It appears that Mr. Mahindra Mhatre has given an Affidavit under duress, coercion and pressure exerted by the Petitioner since he is a tenant of Rajesh Building.

17. Mr. Pardiwalla submitted that, with regard to the Affidavit of Arun Kothari, it was stated in the Rejoinder that the instances recorded in the Affidavit are manipulated. If really the Respondent was found moving naked on the terrace of his flat, then why no prudent eye witness made a police complaint against the Respondent is an issue which is required to be taken into consideration by the Court. Furthermore, it has been stated in the rejoinder that, in paragraph 6 of his Affidavit, the said deponent has said that

"We have also witnessed Rajesh Patil on multiple occasions walking on the terrace of the building entire unclothed which has caused great concern and discomfort to us." The explanation in this paragraph is absolutely vague since who were the persons who witnessed the alleged incidents is not named in the Affidavit. This itself creates a doubt about the genuineness of the contents of the Affidavit. Mr. Pardiwalla further submitted that a perusal of the said Affidavit further reveals that Mr. Arun Kothari has given his Affidavit for extraneous reasons to support the Petitioner in her wrongful acts.

18. Mr. Pardiwalla submitted that the Petitioner has also sought to rely upon the so-called Affidavit of Dr. Yusuf Matcheswalla. So far as the so-called affidavit of Dr. Yusuf Matcheswalla is concerned, the Applicant has taken a categorical stand in her Rejoinder that Dr. Yusuf Matcheswalla is having a tainted record while he was associated with Masina Hospital and a copy of a newspaper report which was published in Mumbai Mirror on 17th February 2018 with regard to Dr. Yusuf Matcheswalla is also annexed at Exhibit-C (Page 556) to the Affidavit in Rejoinder. The press report clearly records that Dr. Yusuf Matcheswalla has been guilty of needless hospitalization of patients. So far as the report of Dr. Yusuf Matcheswalla is concerned, Mr. Pardiwalla submitted that the same is fully irrelevant in deciding the present controversy in the Interim Application. The Interim

Application is based on the ground that the Petitioner has played a fraud upon this Court by knowingly making false and incorrect statements and by deliberate suppression of material facts from this Court. Hence, the so-called Certificate issued by Dr. Yusuf Matcheswalla in support of the alleged stand of the Petitioner is wholly irrelevant and ought not to be taken into consideration while deciding the present Interim Application.

19. Mr. Pardiwalla submitted that the documentary evidence submitted on behalf of the Applicant clearly reveals that the Respondent was not having any mental illness since 1970, as falsely claimed in the Guardianship Petition, but was in a sound state of mind. The statement made by the Petitioner in the Guardianship Petition to the effect that the Respondent is unmarried is also a palpable false statement made with a view to mislead the Court and procure orders in her favour. The pleadings jointly verified by the Petitioner and the Respondent before the Court of Small Causes at Mumbai (Bandra Branch) and the Testamentary Petition clearly prove that the Respondent was in a proper frame of mind. Furthermore, the Judgement and Order delivered in Suit No. 1330 of 1980 filed before this Court by M/s. GB Construction against Dwarkanath Anandrao Patil, the Petitioner and the Respondent also reveal that the Respondent was a co-Defendant to the said suit. If really the Respondent was having any mental

illness since 1970 as alleged in the Guardianship Petition, then the parents of the Respondent would have applied for the guardianship of the Respondent while they were alive. The mother of the Petitioner and the Respondent passed away in the year 2003 whereas their father passed away in the year 2004.

20. Mr. Pardiwalla submitted that Order 32 of the Code of Civil Procedure, 1908 makes provision with regard to the suits by or against minors and persons of unsound mind. Rules 1 to 14 of Order 32 apply to the minor, whereas Rule 15 of Order 32 applies to persons of unsound mind and Rules 1 to 14 (except Rule 2A) which are applicable to the minors are also applicable to the persons of unsound mind. If really the Respondent was of unsound mind since 1970, as alleged by the Petitioner in her Guardianship Petition, then the Respondent could not have been a party to the suits filed before the Court of Small Causes at Mumbai (Bandra Branch) and also could not have been a co-Petitioner to the Testamentary Petition for the grant of letters of administration to the properties and credits of Late Dwarkanath Patil. Moreover, the father of the Petitioner and the Respondent and the Petitioner, who was Defendant No. 3 in Suit No. 1330 of 1980 filed by G B Construction, ought to have made a statement before the Court that the Respondent was of unsound mind and he could be represented only by the

guardian appointed by the Court. However, the Petitioner and the late father of the Petitioner and the Respondent did not inform the Court that the Respondent, who was Defendant No. 2 in Suit No. 1330 of 1980, was of unsound mind, which means that the Respondent was of sound mind in the year 1980 when the suit was instituted by G B Construction.

21. Mr. Pardiwalla submitted that the stand of the Applicant that the Respondent was in a sound state of mind, and not having any mental illness since 1970, can be corroborated from the Leave and License Agreement dated 06th November 2020 (Pages 1 to 25 of compilation of documents tendered by the Applicant) executed by and between the Petitioner and the Respondent on one hand as the licensors and Axis Bank on the other hand as the licensee. Moreover, the said Leave and License Agreement is duly registered with the Office of the Sub-Registrar of Assurances, Mumbai and the Respondent himself has appeared before the Sub-Registrar for execution of the document. Had the Respondent been a person of unsound mind since 1970, as wrongly projected by the Petitioner in Guardianship Petition, then the Sub-Registrar would not have registered the document.

22. Mr. Pardiwalla submitted that the Applicant, in support of her contention that the Petitioner has been guilty of abuse of trust and is acting adverse to the interest and faithful performance of her duties, has referred to and relied upon certain documents in the Compilation of Documents tendered by the Applicant on 07th April, 2026.

23. Mr. Pardiwalla submitted that a Leave and License Agreement dated 27th June, 2025 (Pages 26 to 55 of Compilation of Documents tendered by the Applicant on 07th April, 2026) came to executed by the Petitioner in her individual capacity and in her capacity as the guardian of the Respondent (as the licensors) in favour of M/s. Kisan Konnect Safe Food Private Limited (as the licensee). In the said Leave and License Agreement an amount of Rs. 12,80,000/- has been shown as the security deposit paid by the licensee to the licensors through RTGS/NEFT in the Licensor No. 1's bank account, being Account No.917010056910786 with Axis Bank, having IFSC Code UTIB0001343. This account stands solely in the name of the Petitioner and the entire security deposit amount has been pocketed by the Petitioner as if she is the sole owner of the licensed premises. This illegal act on the part of the Petitioner of depositing money in her personal account and not depositing the money in the account of the Respondent is clearly an abuse of the trust as contemplated under Section 39 of the Guardians & Wards Act,

1890, and not in faithful performance of the duties of the guardian as stipulated in sub-section (g) of Section 39.

24. Mr. Pardiwalla submitted that the Petitioner has relied upon letter dated 11th March, 2026, which appears to be on the letter head of Axis Bank, wherein it has been recorded that the security deposit amount of Rs.11,56,330/- has been returned from Shubhangi Kamlesh Navalkar (the Petitioner), through Cheque No.232824 dated 05th September, 2025 towards the return of security deposit. Mr. Pardiwalla submitted that the Petitioner cannot justify the security deposit amount of Rs. 12,80,000/- in her Axis Bank Account No. 917010056910786 having IFSC Code UTIB0001343 with the letter dated 11th March, 2026 issued by Axis Bank. Moreover, the Leave and License Agreement dated 27th June, 2025 reveals that the security deposit amount was deposited in the account of the Petitioner on 26th June, 2025, whereas in the Axis Bank letter dated 11th March, 2026, it is stated that the Petitioner has issued the cheque on 05th September, 2025 for Rs. 11,56,330/-. Hence, there is no connection between the refund of the security deposit amount and the deposit of the security deposit amount in the personal account of the Petitioner. The Petitioner is trying to confuse the Court with the letter issued by Axis Bank.

25. Mr. Pardiwalla submitted that another instance of misuse and abuse of the power of the Petitioner as the guardian is evident from a copy of the Leave and License Agreement dated 05th February, 2025 (Pages 56 to 63) duly registered by and between Nityanand K Nawalkar as the licensor and Karan Jagdish Khonde and others as the licensees. Nityanand Nawalkar is the son of the Petitioner who does not have any authority to claim himself as the owner of any of the flats in Rajesh Building since Rajesh Building belongs to the Respondent. Mr. Pardiwalla submitted that the schedule annexed to the Leave and License Agreement dated 05th February, 2025 can very well be compared with the Schedule of Assets annexed as Schedule 1 to the Letters of Administration Petition (Page 144 of IA) and also the schedule at Exhibit-F to Guardianship Petition (Pages 106 and 107 of the IA) which would show that the flat in question which is given on leave and license by Nityanand Navalkar, without any authority, is situated in Rajesh Building. Nityanand Navalkar does not get any right, title or interest in Rajesh Building. The execution of the leave and license agreement dated 05th February, 2025 by Nityanand Navalkar is also an indication to the fact that the Petitioner and her son are in collusion and connivance with each other and trying to usurp the property of the Respondent.

26. Mr. Pardiwalla submitted that the Respondent is also holding savings account in a post office at Khar Colony, bearing Account No. 1196708879, and from the said account, the Respondent had been withdrawing monies from time to time through cheques signed by him for the repairs and maintenance of the house and the day-to-day miscellaneous expenses. The withdrawals of the money through cheques, for the period from 17th June, 2022 up to 28th February, 2024, signed by the Respondent would reveal that he is capable of managing his affairs and does not need any guardian.

27. Mr. Pardiwalla submitted that the Petitioner had deliberately suppressed the marital status of the Respondent by disclosing that the Respondent is unmarried. Section 11 of the Guardians and Wards Act, 1890, deals with the procedure on admission of an application. Section 11 mandates the issuance of show-cause notice before appointing the guardian. Sub-section (a)(ii) of Section 11 stipulates that the show-cause notice of the application be issued to the person if any named in the Petition or having custody or possession of the person or property of the minor. Sub-section (b) further stipulates that the notice be pasted on a conspicuous part of the court house and residence of the minor subject to the rules made by the High Court under the Act. In the instant case, no notice as mandated under Section 11

was issued before passing the order appointing the Petitioner as the guardian. In fact, the Petitioner, in order to circumvent the mandatory provisions of Section 11 of the Guardian and Wards Act, 1890, deliberately made a false statement in the Guardianship Petition that the Respondent is unmarried. Had the Petitioner made a statement in the Petition that the Respondent is married to the Applicant, the Court would not have granted guardianship in favour of the Petitioner without hearing the Applicant.

28. The entire basis on which the guardianship is granted, as can be seen from the order dated 24th April, 2024 (Pages 114 to 120 of IA) is highlighted in Paragraph 14 of the order which states that "Based on the averments in the petition and the fact that the Petitioner is the only surviving family member of the Respondent and considering the fact that the Petitioner and the Respondent's parents have expired, there is no one other than the Petitioner to look after the welfare of the Respondent, Guardianship Petition was made absolute in terms of prayer clause (a) of the petition."

29. In support of his contentions, Mr. Pardiwalla relied upon following decisions :

(i) United India Insurance Co. Ltd. vs. Sanjay Singh & Ors. AIR 2000 SC 1165

(ii) Smriti Madan Kansagra vs. Perry Kansagra AIR 2021 SC 5423

(iii) K D Sharma vs. Steel Authority of India Ltd. (2008) 12 SCC 481

(iv) Municipal Corporation of Delhi vs. Kamla Devi & Anr. AIR 1996 SC 1732

(v) Shrisht Dhawan (Smt) vs M/s. Shaw Brothers (1992) 1 SCC 534

(vi) Ram Sarup Gupta (dead) by LRs vs. Bishan Narain Inter College & Ors. AIR 1987 SC 1242

(vii) Anila Rege vs. Guruprasad Rege & Ors. 2004 (3) ALL MR 271

30. Mr. Pardiwalla also relied upon various orders passed by this Court from time to time in other matters to show that the issuance of a notice under Section 11 of the Guardians and Wards Act, 1890 is mandatory and cannot be dispensed with except in cases where the Affidavit/s of the other consenting legal heirs is/are given in favour of the guardian giving their consent while appointing the guardian of the ward. They are as follows:-

(i) Guardianship Petition (L) No.21364 of 2024 - Binita Dhruv Karia (petitioner) and Ms. Aashna Dhruv Karia, Decided on 31.08.2023.

(ii) Guardianship Petition (L) No. 6216 of 2023

Gayatri Uday Katheeth ...Lunatic

In the matter between

Arvind Singh Katheeth ...Petitioner

Decided on 27.03.2023

(iii)Guardianship Petition (L) No.34892 of 2022

Bipin Ramrao Sawant ...Lunatic

In the matter between

Kusum Bipin Sawant ...Petitioner

(iv) Guardianship Petition No. 8 of 2023

31. Mr. Pardiwalla submitted that the aforesaid case laws clearly reveal that the notice under Section 11 of the Guardians and Wards Act, 1890, can be dispensed with only in cases where the relatives of the ward are either

a party to the Petition or they have given their consent Affidavits in favour of the guardian. In the case in hand, the Applicant, who is the wife of the Respondent, was neither a party to the Guardianship Petition, nor had she given her consent Affidavit in favour of the Petitioner for being appointed as the guardian. Hence, the order appointing the guardian is without following the due mandatory procedure laid down in the law and as such also the guardianship order deserves to be recalled.

SUBMISSIONS OF THE ORIGINAL PETITIONER

32. Mr. Karl Tamboly, the learned counsel appearing on behalf of the original Petitioner, made submissions opposing the grant of any reliefs in the Interim Application. The Petitioner also filed documents, Compilation of Judgements and Written Submissions.

33. Mr. Tamboly submitted that the Respondent is the brother of the Petitioner, who was born prematurely at 6 and ½months and is of unsound mind. The Respondent was born on 7th October 1959 and since birth had experienced mental disability and slow physical development. He was also

unable to complete his secondary schooling. In fact, as early as in the 1970s, doctors had taken note of his mental disorder and prescribed medication for his psychiatric condition. A copy of the prescription issued by Dr. Ravi Gupte on 28th October 1974 has been annexed as Exhibit B to the Guardianship Petition.

34. Mr.Tamboly submitted that, in 2003-2004 both parents of the Petitioner and Respondent expired. After their death, the Petitioner has been the sole caretaker of the Respondent, looking after all his needs. The Petitioner at all times has tried her best to take care of the Respondent, despite herself being a senior citizen. The Petitioner would regularly check upon the Respondent to ensure that he was in good physical and mental health. With age, the Respondent's mental condition has deteriorated, with various instances of erratic behaviour and refusal to comply. At various times, the Respondent would be seen roaming in the house and terrace naked (the photographs of which have been tendered across the bar to the Court). Various neighbouring residents complained of the same and have also put it on Affidavit. The Respondent would also try to self-sabotage his health, due to which the Petitioner regularly visited the Respondent and cared for him as any family member would to ensure that he lived a dignified and respectable life.

35. Mr. Tamboly submitted that, with the Respondent's mental condition worsening, on 3rd March 2024, the Petitioner went to routinely check on him and noticed his left foot swollen with an ulcerating raw wound. Accordingly, she immediately admitted him to 'Criticare Asia Hospital', where the consulting physician observed that such a grievous injury, coupled with the Respondent's state of mind, warranted a psychiatric evaluation. The psychiatrist attending to the Respondent, upon diagnosis, stated that the Respondent was suffering from disorganized schizophrenia and it was advised that he be admitted immediately to a mental wellness centre. With the aforesaid observations and advice, the Respondent was discharged from the hospital and immediately admitted to 'Jagruti Rehabilitation Centre' for observation, care and treatment of disorganised schizophrenia. Mr. Tamboly submitted that, in order to take a further opinion, the Respondent, on 15th April, 2024, was also examined by the Department of Psychiatry at the Dr. RN Cooper Hospital in Vile Parle. After testing the Respondent it was noticed that not only was the Respondent suffering from schizophrenia but he had a disability score of greater than 40%, which signified severe disability. A psychiatric evaluation of the Respondent was also conducted on 27th August 2024 and 1st September 2024 by Dr. Yusuf A. Matcheswalla. After detailed evaluation of the Respondent, even Dr. Yusuf Matcheswalla opined that the Respondent was schizophrenic with significant cognitive impairments.

36. Mr. Tamboly submitted that, on 17th April 2024, a Guardianship Petition was filed under the relevant provisions of the Guardians and Wards Act 1890 since the Mental Health Act 1987 had been repealed and the Guardians and Wards Act 1890 was the only enactment that dealt with guardianship. It was specifically averred that the Petitioner holds a B.Sc. degree and is a retired chief manager of a nationalized bank, leading an active retired life and devoting herself to the care of her family. The Petitioner had already been taking care of the Respondent and his daily needs and was therefore capable of taking decisions on behalf of the Respondent. Considering his deteriorating physical and mental health, the Respondent was no longer capable of taking care of himself or his properties and therefore it was necessary and expedient that the Petitioner be declared and appointed as the guardian of the Respondent and his properties. It was also averred that the Respondent is unmarried and does not have any children.

37. Mr. Tamboly submitted that by an Order dated 24th April 2024, this Court appointed the Petitioner as the guardian of the Respondent. The Guardianship Petition was made absolute in terms of prayer clause (a) and accordingly the Petition came to be disposed of.

38. Mr. Tamboly submitted that the Applicant filed the present Interim Application on 30th May 2025, *inter alia,* for removal of the Petitioner as the guardian of the Respondent. It is the Applicant's case that -

(i) On 8th March 2018 she was married to the Respondent at Arya Samaj Temple in Santa Cruz. Accordingly, being the spouse of the Respondent, show cause notice under Section 11 of the Guardians and Wards Act, 1890 should have been issued and that the Petitioner was aware of the Applicant's marriage to her brother and accordingly has played fraud on this Court by not disclosing the same.

(ii) Respondent has always been of sound mind and accordingly the case of the Petitioner that the Respondent is of unsound mind is incorrect. Deliberate false statements with respect to the fact that the Respondent was of unsound mind have been made.

39. Mr. Tamboly submitted that the Respondent has an unsound mind and required a guardian.

40. In this context, Mr. Tamboly submitted that the material before this Court unequivocally establishes that the Respondent is suffering from severe disorganised schizophrenia, a condition which fundamentally impairs cognitive functioning, judgment, perception of reality, and the ability to make informed decisions. The records of Criticare Hospital (Pg.99 of the Interim Application) clearly indicate that, during his admission, his physical ailments were accompanied by evident psychiatric symptoms, necessitating immediate psychiatric intervention. The attending psychiatrist advised institutional care at a mental wellness facility, noting the severely compromised mental condition of the Respondent.

41. Mr. Tamboly submitted that this is not an isolated opinion but forms part of a consistent and corroborated medical narrative

42. Mr. Tamboly submitted that, most significantly, pursuant to the directions of this Court, an independent Medical Board at JJ Hospital

conducted a comprehensive evaluation of the Respondent. The Report of the said Board conclusively establishes not only the diagnosis of schizophrenia but also the necessity of appointing a guardian. The Mental Status Examination records that the Respondent suffers from delusions of grandeur, including claims of having written the screenplay for well-known films such as Sholay and Kati Patang. Crucially, the Respondent described the alleged marriage as a "filmy marriage," which unmistakably reflects his inability to comprehend the nature, sanctity, and legal consequences of a matrimonial relationship. This single observation, when read in conjunction with the medical findings, conclusively demonstrates that the Respondent lacked the mental capacity to give valid consent to any marriage.

43. Further, Mr. Tamboly submitted that the Applicant is guilty of deliberate and conscious suppression of material facts which go to the very root of the present proceedings. The most significant of such suppressed facts is that the Applicant is, and has always been, a tenant in the ancestral building co-owned by the Respondent and his Sister/Guardian/Petitioner Shubhangi Navalkar, and that even the Applicant's father was a tenant under the Respondent's predecessor-in-title.

44. Mr. Tamboly submitted that the suppression of this material fact is not merely apparent but stands conclusively established from the unimpeachable documentary record placed before this Court. The compilation tendered by the Petitioner, particularly the document at Pg. 1, unequivocally evidences the tenancy of the Applicant's father. A plain reading of the cause title itself reflects the Petitioner's father as the Plaintiff and the Applicant's father as the Defendant. The proceedings, being in the nature of an RAER Suit, under the Maharashtra Rent Control Act, the jural relationship of landlord and tenant is not a matter of inference but a necessary legal consequence flowing from the very nature of the proceedings. This position is further fortified by a continuous chain of documentary material comprising letters, notices, and communications addressed to the Applicant in her capacity as a tenant. These communications pertain to arrears of rent, maintenance, and other tenancy obligations. Crucially, these are not unilateral assertions but documents that bear acknowledgment and, in several instances, replies from the Applicant herself. This establishes a conscious, sustained and unequivocal recognition of the tenancy relationship over a prolonged period. The record also discloses earlier proceedings between the parties' predecessors, thereby demonstrating that the landlord-tenant relationship is longstanding, continuous, and embedded across generations, and not a recent or incidental arrangement. Mr. Tamboly submitted that, despite the existence of such overwhelming material, the

Applicant has, with full knowledge, deliberately suppressed this fact across her pleadings.

45. Mr. Tamboly submitted that it is a calculated omission designed to withhold from this Court a fact which has a direct bearing on the issues in controversy.

46. Mr. Tamboly further submitted that the importance of this suppression becomes even more pronounced when examined alongside the Affidavits of other tenants residing in the same building. These Affidavits consistently state that the Respondent was suffering from mental instability over a considerable period and that such condition was well known among the occupants of the building. Mr. Tamboly submitted that, in this context, the Applicant's status as a tenant assumes central relevance. She was not a remote or occasional observer but a person in continuous proximity, sharing the same environment and exposed to the Respondent's conduct on a day-to-day basis. In such circumstances, any suggestion, that the Applicant was unaware of the Respondent's mental condition, is wholly implausible.

47. Mr. Tamboly submitted that, further, when this is juxtaposed with the Applicant's categorical and consistent stand that the Respondent was of sound mind, the lack of credibility in her case becomes manifest. Her assertion is not merely contrary to the record but is demonstrably inconsistent with the surrounding circumstances.

48. Mr. Tamboly submitted that the Applicant's conduct following the alleged marriage further undermines her case. Even after the date on which she claims to have married the Respondent, communications continued to be addressed to her in her capacity as a tenant. Significantly, she neither objected to such characterisation nor asserted her alleged status as a spouse. This is wholly inconsistent with ordinary human conduct. A person who has entered into a valid marriage would, in the normal course, assert such status at the earliest opportunity, particularly when dealing with the family or representatives of the spouse. The Applicant's silence in this regard is both unnatural and indicative of the absence of any genuine marital relationship.

49. Mr. Tamboly submitted that this prior knowledge, when considered alongside the circumstances of the alleged marriage, leads to a

compelling inference that the Applicant has taken undue advantage of a person incapable of understanding the nature and consequences of such a relationship. The Medical Board Report from JJ Hospital, wherein the Respondent described the marriage as a "filmy marriage," underscores his lack of comprehension and susceptibility to influence. The Report further reflects his inability to understand the institution of marriage, thereby striking at the very validity of the alleged union.

50. Mr. Tamboly submitted that it is also significant that the alleged marriage was never disclosed to the Petitioner or the family at any relevant point of time. The Petitioner became aware of the same only upon the initiation of proceedings by the Applicant and the production of purported documents. This concealment of the very factum of marriage further supports the inference that the Applicant was conscious of the infirmities surrounding the alleged relationship.

51. Next, Mr. Tamboly submitted that the alleged marriage set up by the Applicant is not a genuine matrimonial union but a sham transaction, conceived and executed under highly suspicious circumstances.

52. In this context, Mr. Tamboly submitted that the Applicant has attempted to lend legitimacy to the alleged marriage by asserting that it was solemnised in the presence of family members, friends, and relatives. This assertion is demonstrably false.

53. Mr. Tamboly submitted that a bare perusal of the photographic evidence reveals that the so-called ceremony was attended by barely four to five individuals, none of whom are family members or friends and for that matter not even known to the Respondent. This is in stark contradiction to the Applicant's own pleadings, including her Domestic Violence Petition, wherein she claims that the marriage was performed in the presence of "family and friends." The individuals present are found to be merely clients associated with a chartered accountancy firm where the Applicant had previously been employed. The complete absence of family members from both sides is a circumstance of grave suspicion.

54. Mr. Tamboly submitted that photographs of the alleged marriage show that the Respondent has worn his kurta over a shirt, which is extremely unusual.

55. Further, Mr. Tamboly submitted that it has come on record that Dr. Magazine, who is shown as a witness to the alleged marriage, himself found the entire transaction to be suspicious and consequently refused to proceed with its registration.

56. More seriously, the said witness has categorically stated that he did not furnish his Aadhaar card or PAN card. Despite this, such documents have been annexed to the marriage application before the Arya Samaj. This establishes that identity documents have been misused and falsely attributed to him without his consent. The use of such fabricated or unauthorised documents to support the alleged marriage is not merely a procedural irregularity but constitutes a serious fraud upon the process of law. It demonstrates a deliberate attempt to create false documentary evidence in order to lend credibility to a fraudulent marriage.

57. Further, Mr. Tamboly submitted that Dr. Magazine has inter alia stated that the Applicant used to come regularly to his home for the purpose of filing of his tax returns. He only shared a professional relationship with her and did not have any close family relationship with the Applicant. He states that, in 2018, the Applicant invited him and his wife, Dr. Rama

Magazine, to her alleged marriage with the Respondent only as guests. He further goes on to say that when his wife and he attended this alleged wedding, they were not introduced to the groom, i.e. the Respondent. At the wedding it was for the first time that the Applicant asked both him and his wife to be witnesses to the marriage. However, since they found the marriage to be suspicious, they refused to be attesting witnesses to the Applicant's marriage to the respondent.

58. Further, Mr. Tamboly submitted that the Applicant has failed to establish even the most basic and essential attributes of a valid and subsisting matrimonial relationship, namely cohabitation and societal recognition.

59. Mr. Tamboly submitted that there is a complete absence of any evidence of cohabitation between the Applicant and the Respondent. Equally, there is no evidence of societal recognition of the parties as husband and wife. Not a single independent witness has come forward to state that the Applicant and the Respondent were ever perceived or treated as a married couple. On the contrary, the evidence on record overwhelmingly establishes that no such marital relationship ever existed.

60. Next, Mr. Tamboly submitted that the Applicant's inconsistent stands and absence of cohabitation demolish her case.

61. In this context, Mr. Tamboly submitted that, in earlier proceedings, including her Domestic Violence complaint, the Applicant has unequivocally asserted that she was "happily residing" with the Respondent as his legally wedded wife, thereby projecting the existence of a stable, continuous, and subsisting matrimonial relationship. This assertion forms the very foundation of her claim. However, in the present proceedings, faced with the absence of any supporting material, the Applicant has materially diluted and altered her stand by claiming that she only "oft and on" resided with the Respondent on the 3rd floor of 'Rajesh Building'.This is not a mere clarification but a complete departure from her earlier case of continuous cohabitation.

62. Mr. Tamboly submitted that the explanation sought to be offered by the Applicant that the Respondent's premises were under "repairs" is wholly implausible and contrary to both logic and record. It is inconceivable that residential premises would remain under repairs for an extended duration of nearly seven years, i.e., from March 2018 to May 2025.

63. Further, Mr. Tamboly submitted that in the Domestic Violence Complaint, the Applicant inter alia states that the Respondent's leg "had recovered by 75%". She has stated that he was in fact recovering at home only through allopathic, ayurvedic, homeopathic, and naturopathy remedies. As is evident from the photographs, the leg had not in any way recovered by 75%. It was in fact so bad, being infested with worms and pus, that any further delay may have resulted in the respondent losing his leg. Further no proof of any medicines which the Applicant had bought and was administering to the Respondent was provided. It is thus evident that the aforesaid is only a concocted story and that the Applicant was never aware of the state of the Respondent's leg because she does not reside with him.

64. Mr. Tamboly submitted that this falsity is further exposed by the photographic evidence on record, including photographs taken in or about March 2025, which clearly depict that the Respondent's flat was in a dilapidated, unhygienic, and wholly uninhabitable condition. The premises lacked basic amenities such as functional furniture, electricity, and sanitary facilities. The condition of the flat was such that no reasonable person, much less one claiming to be a legally wedded spouse, could have resided therein in

any normal or dignified manner. These photographs not only negate any claim of continuous cohabitation but also render the Applicant's diluted assertion of occasional residence wholly implausible.

65. Further, Mr. Tamboly submitted that the Applicant has failed to establish even the most fundamental and indispensable element of a matrimonial relationship, namely cohabitation. In matrimonial jurisprudence, cohabitation is not merely incidental but is a primary and essential indicator of the existence of a genuine marital bond. The complete absence of such cohabitation is, therefore, fatal to the Applicant's claim.

66. Mr. Tamboly next submitted that the Guardianship of the Petitioner is lawful, bonafide and exercised in the best interests of the Respondent.

67. In this context, Mr. Tamboly submitted that the guardianship vested in the Petitioner is lawful, justified, and necessitated solely on account of the medical condition of the Respondent. The appointment of the Petitioner as the guardian is not only supported by overwhelming medical

evidence but is also in furtherance of the welfare, protection, and dignity of the Respondent, who is incapable of managing his affairs.

68. Next, Mr. Tamboly submitted that the allegations of financial impropriety sought to be raised by the Applicant are wholly baseless, misconceived, and are clearly intended to divert attention from her own lack of bona fides.

69. Insofar as the Leave and License Agreement with Kissan Konnect (Pg. 26 of the Applicant's Compilation) is concerned, Mr. Tamboly submitted that the terms of the Agreement clearly provide for an equal distribution of license fees. The bank records on record substantiate that the respective shares have been duly credited to the concerned accounts. The temporary arrangement with respect to the security deposit was purely administrative in nature and was necessitated to facilitate smooth financial transactions. The Security deposit accepted by the Petitioner from Kissan Konnect was utilised to pay the joint liability towards the outgoing licencee, namely Axis Bank Ltd, as substantiated by the letter of the Axis Bank (which has been placed on record separately) which clearly records the same.

70. Similarly, with respect to the premises earlier occupied by Mrs. Naik (Pg. 56 of the Applicant's Compilation), Mr. Tamboly submitted that it is an admitted position that the Petitioner alone paid a sum of Rs. 20 lakhs from her own resources to secure surrender of the tenancy. The Petitioner has attached the Surrender of Tenancy Agreement. (Pg. 125 of the Petitioner's Compilation). Consequently, no adverse inference can be drawn in this regard.

71. As regards withdrawals from the Post Office accounts, Mr. Tamboly submitted that the Respondent continues to remain under active medical supervision and care, and his condition is such that he requires continuous, intensive, and specialised treatment. Even at present, while being admitted in a rehabilitation centre, the Respondent is suffering from a serious medical complication relating to his food pipe, on account of which he is required to undergo periodic medical procedures at frequent intervals to ensure that the same remains functional. These are not routine treatments but critical medical interventions essential for his survival, health, and overall well-being. The entire financial burden of such repeated procedures, hospitalisation, and associated medical expenses is being borne solely by the Petitioner. This, in itself, is a clear and unequivocal demonstration of the

Petitioner's bona fides, her unwavering commitment, and her sense of responsibility towards the Respondent

72. Further, Mr. Tamboly submitted that the Petitioner, despite being presently retired, has continued to shoulder the entire responsibility of the Respondent's medical treatment, rehabilitation, and day-to-day care, without any external support. In addition to the ongoing medical expenditure, the Petitioner is also required to incur substantial legal expenses in relation to multiple proceedings concerning the Respondent's properties, including disputes with certain tenants. These proceedings are necessary and unavoidable, as they are undertaken to safeguard and preserve the Respondent's estate, prevent unauthorized occupation, and ensure that his rights as a landlord remain protected. It is therefore submitted that the funds generated from the Respondent's properties are being utilised entirely for legitimate, necessary, and bona fide purposes, including his medical treatment, maintenance, and the protection and preservation of his estate. The financial inflows and outflows are intrinsically connected to the Respondent's welfare and are being managed with due care and responsibility. In these circumstances, the allegation that the Petitioner is misappropriating or usurping the Respondent's funds is wholly baseless, unfounded, and devoid of any merit.

73. Mr. Tamboly further submitted that much emphasis has been placed by the Applicant on certain legal proceedings and documents, including papers related to succession to his parent's estate and purported sale transactions, wherein the Respondent has signed along with the Petitioner, in an attempt to suggest that he was of sound mind. Mr. Tamboly submitted that such an inference is wholly misconceived. The mere presence of the Respondent's signature on documents does not establish his mental capacity, particularly in light of overwhelming medical evidence to the contrary.

74. Mr. Tamboly submitted that, in fact, the conduct of the Petitioner in ensuring that the Respondent's name continued to be reflected as a co-landlord in all proceedings is demonstrative of her bona fides. The Petitioner has, at all times, sought to preserve and protect the legal rights and status of the Respondent, rather than exclude or override them.

75. Mr. Tamboly submitted that, even independently, the Petitioner, as a co-owner, was entitled to initiate legal proceedings in her own capacity. However, she consciously chose to include the Respondent as a co-landlord

in order to safeguard his legal rights and ensure that his interests remain protected. This conduct is wholly inconsistent with any allegation of mala fide intent or attempt to usurp property.

76. Mr. Tamboly further submitted that, even after the grant of guardianship in 2024, and despite there being no operative restraint orders, the Petitioner has not dealt with or alienated any property of the Respondent. This is a crucial circumstance which clearly establishes her bona fides and her commitment to preserving the Respondent's estate.

77. Mr. Tamboly further submitted that a comprehensive and holistic reading of the Applicant's pleadings, conduct, and the nature of reliefs sought unmistakably reveals that her predominant, if not sole, objective is to obtain control over the Respondent's assets, bank accounts, and immovable properties. The Interim Application is conspicuously bereft of any meaningful concern for the Respondent's health, medical condition, or continued treatment. Instead, there is a recurring and disproportionate emphasis on financial control, access to property, and authority over the Respondent's affairs. Such a selective focus, particularly in a case involving a

person suffering from a serious psychiatric condition, is itself indicative of the Applicant's ulterior motive.

78. Mr. Tamboly therefore submitted that the present Interim Application is a strategic attempt to dislodge the existing lawful guardian who has been caring for the Respondent for decades and to substitute the Applicant in that position, not for the purposes of care or protection, but to gain unfettered access and control over the Respondent's estate. If such an attempt is permitted, it would expose the Respondent, who is already in a vulnerable condition, to serious financial exploitation and risk to his life by neglecting to take care of his health especially in light of her claims that he is a person of sound mind and the leg injury with which the Respondent was found, had been almost completely cured.

79. Mr. Tamboly further submitted that the conduct of the Applicant throughout the course of these proceedings further underscores the complete lack of bona fides in her case. Instead of demonstrating any consistency or seriousness in pursuing her claims, the Applicant has engaged in conduct that is disruptive and obstructive in nature. It is a matter of record that she has attempted to create disturbances at the wellness centre where the

Respondent is presently admitted, thereby interfering with the environment in which he is being maintained. Equally significant is the fact that, despite claiming a close personal relationship with the Respondent, the Applicant has not participated in his care, treatment, or any aspect of his day-to-day management. There is no material to indicate any meaningful involvement on her part in his upkeep. This absence of engagement stands in stark contrast to the role she seeks to assume through these proceedings. Instead, the Applicant has adopted a litigation-centric approach, initiating multiple proceedings and applications, the cumulative effect of which is to delay the adjudication of the main matter. The filing of the application under Order VII Rule 11 CPC in the proceedings for annulment of the marriage is a clear illustration of this strategy. The said Application has already been rejected by the Family Court at Bandra, thereby indicating that the contentions raised therein were devoid of merit. The pattern that emerges is one of calculated delay and procedural obstruction. Rather than advancing a coherent and bona fide claim, the Applicant appears to be prolonging the proceedings in the hope of creating leverage and ultimately securing a financial advantage. Such conduct amounts to an abuse of the process of this Court and disentitles the Applicant from any discretionary relief.

80. Mr. Tamboly submitted that, in these circumstances, the Applicant has failed to make out any case whatsoever for interference with the guardianship granted by this Court. On the contrary, the material on record overwhelmingly establishes that the Respondent is mentally incapacitated, that the alleged marriage is a sham and fraudulent, that the Applicant has suppressed material facts and approached this Court with unclean hands, and that the Respondent has acted at all times in the best interests of the Respondent without any misuse of her position. Mr. Tamboly submitted that the Interim Application is therefore wholly devoid of merit and deserves to be dismissed with exemplary costs.

81. Mr.Tamboly also relied upon the following Judgements:

a. **Jamseed Soli Sorabjee Vs. Dr. Jehangir Soli Sorabjee and Ors. (Guardianship Petition No.8 of 2023)**

b. **Binita Dhruv Karia Vs. Ms. Aashna Dhruv Karia (Guardianship Petition (L) No.21364 of 2023)**

c. **Kalpana Kantilal Shah Vs. Rajesh Kantilal Shah (Guardianship Petition (L) No.28795 of 2023)**

d. **Dr. N. G. Dastane Vs. Mrs. S. Dastane (1975) 2 SCC 326**

SUBMISSIONS OF THE APPLICANT IN REJOINDER

82. Mr. Pardiwalla submitted that so far as the submission of the Petitioner that it is not disclosed in the Interim Application that the Applicant is the tenant of "Rajesh" Building, is concerned, the same is not relevant in deciding the present Interim Application. The letters produced on record by the Petitioner with regard to the Applicant's flat pertain to the alleged non-payment of dues, which were already paid by the Applicant. These letters have no bearing on the present Interim Application. Hence, the question of suppression by the Applicant that she was a tenant of "Rajesh" Building does not arise at all.

83. Mr. Pardiwalla submitted that so far as reliance on prescription dated 28th October, 1974 is concerned, the same has absolutely no bearing on the Interim Application. Mr. Pardiwalla submitted that there is no trail of medical history provided by the Petitioner in the Guardianship Petition to show that, from 1974 onwards till as late as one month prior to the lodging of the Guardianship Petition, i.e., 17th April, 2024, the Respondent was taking any medical treatment for the alleged mental illness. On the contrary, the signing and verification of the pleadings in various suits and testamentary

petition by the Respondent, jointly with the Petitioner, falsifies the case of the Petitioner that the Respondent was suffering from any mental illness since his childhood.

84. In relation to the contention of the Petitioner that nobody was invited to the marriage, and the same raises doubt about the solemnization of the marriage between the Applicant and the Respondent, Mr. Pardiwalla submitted that, since the Petitioner was always dominating in nature, the Respondent disliked and disapproved the dictatorial attitude of the Petitioner. It was for this reason that the Petitioner was not invited to the marriage. Mr. Pardiwalla submitted that the Marriage Certificate issued by the Arya Samaj and the Registrar of Marriage are conclusive proof of the solemnization of a valid and proper marriage between the Applicant and the Respondent. Furthermore, the photographs and the Affidavits duly signed and notarized by the Respondent singly and jointly with the Applicant reveal that the marriage was properly solemnized between the Applicant and the Respondent and that there is no flaw in the same.

85. So far as the assertion, that the Applicant is trying to get her hands on the property of the Respondent, is concerned, Mr. Pardiwalla

submitted that it is pertinent to note that the Applicant and the Respondent are married since 2018. There is not a single document produced on record by the Petitioner to substantiate the aforesaid assertion that the Applicant is trying to get her hands on the property of the Respondent. The Petitioner has also not been able to prove before this Court that she has abused and misused her position as the wife of the Respondent by misappropriating the funds of the Respondent. Mr. Pardiwalla submitted that the mere allegation, without any supportive proof, does not hold any water and this assertion of the Petitioner deserves to be discarded, as the same is fabricated with a view to circumvent the contentions of the Applicant in the Interim Application.

86. Mr. Pardiwalla also made submissions on the Compilation of Documents tendered by the Petitioner.

87. Mr.Pardiwalla also sought to distinguish the judgements relied upon by Mr.Tamboly.

88. Mr.Pardiwalla also submitted that, in the facts and circumstances of the case, the Petitioner should be directed to pay costs to

the Applicant, including exemplary costs. Mr.Pardiwalla quantified the costs at Rs.10,56,704/-

ANALYSIS AND FINDINGS

89. Based on the submissions of the parties, in my view, the following questions arise for consideration of this Court in the present Interim Application:-

(a) Whether the Respondent was of sound mind at the time of his marriage with the Applicant on 8th March 2018 and on the date of passing of the Order dated 24th April 2024?

(b) Whether *prima facie* there was any valid marriage between the Applicant and the Respondent?

(c) Whether the Applicant has suppressed material facts in the present Interim Application?

(d) Whether Notice of the Guardianship Petition should have been served on the Applicant by virtue of

the provisions of Section 11 of the Guardianship and Wards Act, 1890?

(e) Whether the Petitioner has exercised the Guardianship in the best interests of the Respondent?

(f) Whether the Applicant's real motive is financial control of the Respondent's assets and properties?

On Question (a) - Whether the Respondent was of sound mind at the time of his marriage with the Applicant on 8th March 2018 and on the date of passing of the Order dated 24th April 2024?

90. It is the case of the Petitioner in the Guardianship Petition that the Respondent was born on 7th October 1959 and since birth the Respondent has experienced mental disability and slow physical development. The Petitioner has annexed to her Affidavit in Reply dated 18th June 2025 an Affidavit of one Ankush Shikhare dated 17th June 2025. The said Ankush Shikhare has deposed in the said Affidavit that he knew the parents of the Petitioner and the Respondent since he was a child. He often used to visit their home in his childhood days to seek education and guidance from the parents of the Petitioner and the Respondent.

91. Mr.Shikhare has further deposed that the Respondent had been a pre-mature child and that he had witnessed his mental instability right from his childhood. He had also seen that his parents were over protective of him. The Applicant has tried to discredit the Affidavit of Mr. Shikhare by submitting that he is a cobbler by work, he owned a shoe shop next to Rajesh Building till 2003 and thereafter he had shifted somewhere else. However, the Applicant has not denied the statements of Mr. Shikhare that he knew the Respondent since he was a child and that he had witnessed his mental instability right from childhood.

92. The Petitioner has also annexed to the Guardianship Petition, a prescription dated 28th October 1974 given by Dr.Ravi Gupte for the Respondent. The tablets referred to in the said prescription clearly show that, even as of 1974, the Respondent had mental problems.

93. The Petitioner has also produced in the Guardianship Petition, a Certificate dated 15th March 2024 issued by Dr.Rohit Singh, a consultant psychiatrist, wherein Dr.Rohit Singh has certified that the Respondent had been examined by him and had been diagnosed to be suffering from

disorganised schizophrenia. The said Certificate also states that, in view of his current mental state, it was advised that the Respondent be admitted in a rehabilitation centre.

94. Further, along with the Guardianship Petition, the Petitioner has produced a Discharge Summary of Criti Care Multispeciality Hospital and Research Centre. The said Discharge Summary shows that it has been recorded that the Respondent had a history of hallucination.

95. The Petitioner has produced along with the Guardianship Petition, a Certificate issued by Dr. Amar Shinde of of Jagruti Rehabilitation Centre, whereby the said doctor, who is a consulting psychiatrist, has certified that the Respondent had been admitted since 14th March 2024 in Jagruti Rehabilitation Centre and was under observation, care and treatment for provisional diagnosis of Disorganized Schizophrenia. The said Certificate also stated that the Respondent was under treatment with medicine and counseling.

96. The Petitioner has produced with the Guardianship Petition a Report dated 15th April 2024 issued by Dr. R. N. Cooper Hospital stating that the Respondent was diagnosed with Disorganized Schizophrenia. The said Report also states that, since past 20 years, he has irregular compliance on medications, he has poor self care, would not eat properly, poor management of house, muttering and behavioural issues like excessive anger outbursts and laughing to himself. The Report also states that he has complications due to poor hygiene which led to cellulitis in his legs and was therefore admitted to the hospital.

97. Further, the Petitioner has produced along with the Guardianship Petition, an extract from "Person with Disability Registration" issued by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, dated 3rd April 2024, wherein the disability of the Respondent has been referred to as mental illness and the disability percentage is referred to as 70%.

98. The Petitioner has also produced in her Reply to the present Interim Application an Affidavit dated 14th June 2025 of Dr. Yusuf Matcheswalla, a Consultant Psychiatrist having his clinic at Worli, Mumbai.

The said Affidavit shows that Dr. Yusuf Matcheswalla comprehensively examined and carried out various tests on the Respondent. In the said Affidavit, Dr. Yusuf Matcheswalla has opined that the Respondent was of unsound mind and was unfit to take any legal, personal and financial decisions independently and that it is imperative that he receives continuous psychiatric care, supervision and appropriate support to ensure his safety and well-being. Dr. Yusuf Matcheswala also stated that his opinion was based on clinical interviews, diagnostic testing, history from informants, and medical observation. The Applicant has tried to discredit Dr. Yusuf Matcheswala by stating that, in the past, he has been guilty of needless hospitalisation. However, the Applicant has not been able to deny the aforesaid opinion of the doctor.

99. When this Interim Application came up before this Court, by an Order dated 9th October 2025, this Court directed the Authorities of J. J. Group of Hospitals and Grant Medical College of Mumbai to constitute a Medical Board to examine the physical and mental health of the Respondent and submit a Report to this Court on or before 12th November 2025. The Medical Panel of Grant Medical College and Sir J. J. Group of Hospital, Mumbai, submitted a Report dated 4th November 2025. The said Report stated that on mental status examination of the Respondent, the Medical

Board had found that the Respondent suffers from delusions of grandiosity (he has stated that he had written the screenplay for the films 'Sholay' and 'Kati Patang'). The Report further stated that the Respondent stated that his marriage was a "filmy marriage". Further, the Report stated that psychological testing was done on 22rd October 2025 and 24th October 2025 and that the Respondent was suffering from Schizophrenia and needs a guardian to look after his welfare.

100. Further, apart from all these medical opinions, the Petitioner has produced photographs which show that the Respondent was found moving naked on the terrace of his building. The photographs also showed an untreated leg wound of the Respondent. The photographs also showed the pathetic and poor hygienic state of the home of the Respondent.

101. In my view, the said evidence, medical reports and photographs clearly show that the Respondent was of unsound mind much prior to his so called marriage on 8th March 2018 and on the date when this Court appointed the Petitioner as his Guardian i.e. on 24th April 2024.

102. In my view, in the light of the aforesaid overwhelming evidence, it is not possible to accept the submission of the Applicant as set out hereinabove that the Respondent was of sound mind because he signed legal proceedings, Rent Receipts, Leave and License Agreement and Post Office Savings Account. In my view, it is obvious that, despite being of unsound mind, the Respondent was made to sign these documents as a matter of convenience. These facts do not convince me to ignore the overwhelming medical and other evidence showing that the Respondent is of unsound mind.

103. Accordingly, question (a) is answered in the negative.

Question (b) – Whether prima facie there was any valid marriage between the Applicant and the Respondent.

104. Whether there was any valid marriage between the Applicant and the Respondent is a question which would have to be ultimately decided by the Family Court. In fact, the Petitioner has filed a Petition in the Family Court seeking annulment of the marriage and the same is pending in the

Family Court. However, the Applicant has specifically sought recall of the Order dated 24th April 2024 passed by this Court appointing the Petitioner as a guardian of the Respondent on the ground that she was married to the Respondent on the date of the Order and the same was not disclosed. Therefore, this Court will have to *prima facie* consider whether there was any valid marriage between the Applicant and the Respondent.

105. In this context, as held hereinabove, the Respondent was not of sound mind on 8th March 2018 when the alleged marriage took place. Therefore, there was no question of the Respondent giving free consent to the marriage. In my view, on this ground alone, it can be considered that *prima facie* there is no valid marriage between the Applicant and the Respondent.

106. The Applicant has attempted to show that there was a valid marriage between her and the Respondent by asserting that it was solemnized in the presence of family members, friends and relatives. In my view, this assertion is false. A bare perusal of the photographic evidence reveals that the so called ceremony was attended by barely four to five individuals, none of whom were family members or friends or known to the Respondent. These individuals are neither family nor close acquaintances but

clients associated with the C.A. firm where the Applicant had previously been employed.

107. The complete absence of family members from both sides is also a circumstance of grave suspicion that any valid marriage took place.

108. Further, a bare perusal of the colour photographs of the said alleged marriage shows that the Respondent has worn a kurta over a shirt, which is extremely unusual.

109. Further, it has come on record that Dr. Magazine, who is supposed to be a witness to the marriage, himself found the entire transaction to be suspicious and consequently refused to proceed with its registration. Dr. Magazine categorically stated that he had never furnished his Aadhar Card or PAN Card to the Applicant. Despite the same, such documents have been annexed to the marriage application before the Arya Samaj. This establishes that the identity documents of Dr Magazine have been misused.

110. Dr. Magazine has given a statement to the police. Dr. Magazine has stated that the Applicant used to come regularly to his home for the purpose of filing his tax returns. He only shared a professional relationship with her and do not have any family relationship with the Applicant. He further stated that, in 2018, the Applicant invited him and his wife Dr. Rama Magazine to her marriage with the Respondent. Dr. Magazine goes on to say that when he and his wife attended the marriage, they were not introduced to the groom, i.e. the Respondent. At the marriage, it was for the first time that the Applicant asked both him and his wife to be witnesses to the marriage. However, since they found the marriage to be suspicious, they refused to be attesting witnesses to the Applicant's marriage to the Respondent.

111. The aforesaid statement of Dr. Magazine also shows that the so called marriage between the Applicant and the Respondent was very suspicious.

112. Further, the Applicant has failed to establish even the most basic and essential attributes of a valid and subsisting matrimonial relationship, namely, cohabitation and societal recognition. There is a complete absence of any evidence of cohabitation between the Applicant and the Respondent.

The Applicant has not produced any document to show that she and the Respondent ever shared a household. There is no joint address proof, no utility bills, no correspondence and no independent material evidencing a shared domestic life. The complete absence of any proof of cohabitation shows that *prima facie* there was no valid marriage between the Applicant and the Respondent.

113. Equally, there is no evidence of societal recognition of the Respondent and the Applicant as husband and wife. Not a single independent witness has come forward to state that the Applicant and the Respondent were ever perceived or treated as a married couple. On the contrary, the evidence on record overwhelmingly establishes that no such matrimonial relationship ever existed. The independent Affidavits of neighbours and residents produced by the Petitioner show that the Respondent was residing alone and was never seen cohabiting with the Applicant.

114. The affidavit of Mr. Arun Kothari, a neighbour from the adjoining building, (which is annexed at page 503 of the Reply to the Interim Application) is particularly important. He has described instances of the

Respondent engaging in highly abnormal behaviour, including remaining unclothed in common areas of the building. Significantly, even after the alleged marriage, in May 2020, when such an incident occurred, Mr. Kothari contacted the Petitioner and not the Applicant. This clearly demonstrates that even the residents of the building were completely unaware of any alleged marriage.

115. Further, the Affidavit of Mrs Vyas (which is annexed at page 525 of the Reply to the Interim Application), an immediate neighbour staying on the same floor as the Applicant, also corroborates the absence of any cohabitation and confirms that the Applicant and the Respondent were never seen together as a couple and the Applicant has always been residing in the flat, adjoining to Mrs Vyas's flat, along with her sister.

116. All the aforesaid circumstances establish that *prima facie* there was no valid marriage between the Applicant and the Respondent.

117. Further, there are various inconsistencies in the case of the Applicant which also leads this Court to believe that *prima facie* there was no

valid marriage between the Applicant and the Respondent. In earlier proceedings, including in the Domestic Violence complaint, the Applicant has unequivocally asserted that she was “happily residing” with the Respondent as his legally wedded wife, thereby projecting the existence of a stable, continuous, and subsisting matrimonial relationship. However, in the present proceedings, faced with the absence of any supporting material, the Applicant has materially diluted and altered her stand by claiming that she only “oft and on” resided with the Respondent on the 3rd floor of the Rajesh Building. This is a complete departure from her earlier case of continuous cohabitation. Such a shift is clearly tailored to reconcile her pleadings with the absence of any documentary or independent evidence of shared residence The explanation sought to be offered by the Applicant that the Respondent's premises were under "repairs" is wholly implausible and contrary to both logic and record. It is inconceivable that residential premises would remain under repairs for an extended duration of nearly seven years, i.e., from March 2018 to May 2025.

118. The inconsistency of the Applicant’s case is evident from the Applicant’s own averments in her Domestic Violence Petition wherein she stated that she would bring food from her parental home for the Respondent and that the Respondent had promised to compensate her for the same. Such

a narrative is wholly incompatible with the existence of a subsisting marital relationship. In the ordinary course of matrimonial life, there would be a shared household with basic functional amenities, including a kitchen, and no question would arise of a husband "paying" his wife for providing food. The Applicant has offered no explanation whatsoever as to why, despite claiming to be a spouse, she did not reside in a functional household or why the premises allegedly shared by them remained in such an uninhabitable state. These glaring inconsistencies strike at the root of the Applicant's case.

119. Further, assuming for the sake of argument that the Applicant was in fact residing with the Respondent, then her conduct is equally inexplicable and totally inconsistent with that of a spouse. The record reflects that the Respondent had suffered serious injury to his leg which deteriorated to a very bad infection. Despite her claim that she was taking care of the Respondent, there is no material to show that the Applicant took any steps to secure timely medical attention or intervene in any meaningful manner. Such indifferent behaviour to a grave medical condition is wholly incompatible with the ordinary conduct of a spouse and raises serious doubts about the veracity of the Applicant's case.

120. For all these reasons, in my view, *prima facie* there was no valid marriage between the Applicant and the Respondent. Accordingly, question (b) is answered in the negative.

Question 'c' – Whether the Applicant has suppressed any material facts in her Interim Application ?

121. The Applicant is also guilty of suppressing material facts in the Interim Application. The most significant of such suppressed facts is that the Applicant is, and has always been, a tenant of the Rajesh Building, which is co-owned by the Respondent and the Petitioner, and that even the Applicant's father was a tenant in the said building.

122. The suppression of this material fact is not merely apparent but stands conclusively established from the unimpeachable documentary record placed before this Court. The Compilation tendered by the Petitioner and particularly, the document at page 1, unequivocally evidences the tenancy of the Applicant's father. The plain reading of the cause title itself reflects that the Petitioner's father is the Plaintiff and the Applicant's father is the Defendant. The proceeding, being in the nature of RAER Suit, under the

Maharashtra Rent Control Act, the jural relationship of landlord and tenant is not a matter of inference but a legal consequence flowing from the very nature of the proceedings. This position is further fortified by a continuous chain of documentary evidence which is annexed to the Compilation. These communications are addressed to the Applicant in her capacity as a tenant and are annexed at pages 3 to 22 of the Compilation of Documents filed by the Petitioner. These communications pertained to arrears of rent, maintenance and other tenancy obligations. Despite the existence of such overwhelming material, the Applicant has, with full knowledge, deliberately suppressed these facts in her pleadings. In my view, this is a calculated omission designed to withhold from this Court facts which have a direct bearing on the issues in controversy.

123. The importance of this suppression becomes even more pronounced when examined along side the Affidavits of other tenants residing in the said Rajesh Building. These Affidavits state that the Respondent was suffering from mental instability over a considerable period and that such a condition was well-known amongst the occupants of the Rajesh Building. In this context, the Applicant's status as a tenant assumes great relevance. The Applicant was not a remote or occasional observer but a person in continuous proximity, sharing the same environment and exposed

to Respondent's conduct on a day to day basis. In such circumstances, any suggestion, that the Applicant was unaware of the Respondent's mental condition, is wholly implausible. The very reasonable and logical inference is that the Applicant had full knowledge of the Respondent's mental incapacity at all material times. Further, when this is juxtaposed with the Applicant's categorical and consistent stand that the Respondent was of sound mind, the lack of credibility in her case becomes manifest. The Applicant's assertion is not merely contrary to the record but is inconsistent with the surrounding circumstances.

124. Further, even after the date on which the Applicant claims to have married the Respondent, communications were addressed to her in her capacity as a tenant. Significantly, she neither objected to such characterisation nor asserted her alleged status as a spouse. This is wholly inconsistent with ordinary human conduct. A person who has entered into a valid marriage would, in the normal course, assert such circumstances, at the earliest available opportunity, particularly when dealing with the family or representatives of the spouse.

125. The fact that the Applicant is a tenant in the Rajesh Building, where even the Respondent resides and which is owned by the family of the Petitioner and the Respondent, when considered along with the circumstance of the alleged marriage, lead to a compelling inference that the Applicant has taken undue advantage of a person incapable of understanding the nature of consequence of such a relationship. The report of the Medical Board of J. J. Hospital, wherein the Respondent described his marriage as a "filmy marriage", underscores his lack of comprehension and susceptibility to influence. For all the aforesaid reasons, Question (c) is answered in the affirmative. The Applicant has suppressed material facts in her Interim Application. It is a settled principle that a party seeking equitable and discretionary relief must approach the Court with clean hands, full disclosure and utmost good faith. The Applicant has failed to meet these standards. For all these reasons, the present Interim Application deserves to be dismissed.

Question (d) - Whether Notice of the Guardianship Petition should have been served on the Applicant by virtue of the provisions of Section 11 of the Guardianship and Wards Act, 1890?

126. Section 11 of the Guardians and Wards Act, 1890 reads as under:-

> *"11. Procedure on admission of application.—(1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—*
>
> *(a) to be served in the manner directed in the Code of Civil Procedure (14 of 1882) on—*
>
> *(i) the parents of the minor if they are residing in [any State to which this Act extends],*
>
> *(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,*
>
> *(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and*
>
> *(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and*
>
> *(b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.*
>
> *(2) The State Government may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall*

also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).”

127. It is the case of the Applicant that, in Guardian Petition No.9 of 2024, before appointing the Petitioner as a guardian of the Respondent, notice should have been served on the Applicant, being the wife of the Respondent, by virtue of the provisions of Section 11 of the Guardians and Wards Act, 1890.

128. The Applicant did not have any custody or possession of the person or property of the Respondent and, therefore, the question of serving any Notice, by virtue of the provisions of Section 11(a)(ii), on the Applicant, did not arise at all. Further, the Applicant, in light of my finding that *prima facie* there is no valid marriage between the Applicant and the Respondent, would not fall under Section 11(a)(iv) of the Guardian and Wards Act, 1890.

129. In these circumstances, in my view, there was no question of the notice of the Guardianship Petition being served on the Applicant by virtue of the provisions of Section 11 of the Guardian and Wards Act, 1890. Hence, question (d) is answered in the negative.

Question (e) – Whether the Petitioner has exercised the Guardianship in the best interests of the Respondent?

130. It is the case of the Applicant that the Petitioner should be removed as a guardian of the Respondent as the Petitioner has not acted in the best interests of the Respondent and has in fact used her guardianship to misappropriate the assets of the Respondent.

131. I am afraid that I am unable to accept this case of the Applicant. The Petitioner, being the sister of the Respondent, has discharged her responsibilities as a Guardian with utmost diligence and sincerity. She has ensured that the Respondent receives continuous and appropriate medical care by admitting him to reputed hospitals and rehabilitation centres, arranging consultations with specialists and monitoring his treatment.

132. It is of considerable significance that since the grant of Guardianship in 2024, the Petitioner has not sold or alienated or encumbered or otherwise dealt with any property belonging to the Respondent in a manner prejudicial to his interest. On the contrary, she has scrupulously preserved his estate and has consistently protected his rights as a landlord in all legal proceedings. This consistent course of conduct clearly demonstrates that the Guardianship has been exercised strictly in the best interests of the Respondent and has not been misused in any manner whatsoever.

133. In my view, the allegation of financial impropriety sought to be raised by the Applicant is baseless and misconceived. In so far as the Leave and License Agreement with Kissan Konnect (at page 26 of the Applicant's compilation) is concerned, the terms of the Agreement clearly provided for equal distribution of the license fees.

134. The Bank records on record substantiate that the respective shares have been duly credited to the concerned accounts. The arrangement with respect to the security deposit was purely administrative in nature and

was necessitated to facilitate smooth financial transactions. The Security Deposit accepted by the Petitioner from Kissan Konnect was utilised to pay the joint liability towards the outgoing licensee, namely Axis Bank Limited, as is substantiated by the letter of the Axis Bank, which clearly records the same.

135. As far as premises occupied by Mrs. Naik are concerned, it is an admitted position that the Petitioner alone paid a sum of Rs.20 Lakhs from her resources to secure the surrender of tenancy. The Petitioner has attached the Surrender of Tenancy Agreement (at page 125 of the Petitioner's compilation). Consequently, no adverse inference can be drawn against the Petitioner in that regard.

136. As regards withdrawals from the Post Office Account are concerned, the Respondent continues to remain under active medical supervision and care and his condition is such that he requires continuous, intensive and specialised treatment. The entire financial burden of such repeated procedures, hospitalisation and associated medical expenses of the Respondent is being borne solely by the Petitioner.

137. In addition to incurring medical expenditure, the Petitioner is also required to incur substantial legal expenses in relation to multiple proceedings concerning Respondent's properties, including disputes with certain tenants. These proceedings are necessary to safeguard and preserve the Respondent's estate and ensure that his rights as a landlord remain protected. Therefore, the funds generated from the Respondent's properties are being utilised entirely for legitimate, necessary and bonafide purposes, including his medical treatment, maintenance, protection and preservation of his estate. In these circumstances, the allegation that the Petitioner has been misappropriating and usurping the Respondent's funds are wholly baseless and devoid of merits.

138. For all the aforesaid reasons, Question (e) is answered in the affirmative.

Question (f) – Whether the Applicant's real motive is financial control over all the Respondent's assets and properties ?

139. In my view, the comprehensive and holistic reading of the Applicant's pleadings, conduct and the nature of reliefs sought by her in the Interim Application unmistakably reveals that her predominant, if not sole, objective is to obtain control over the Respondent's assets, bank accounts, and immovable properties. In the Interim Application, there is a recurring and disproportionate emphasis on financial control, access to property, and authority over the Respondent's affairs. Such a selective focus, particularly in a case involving a person suffering from a serious psychiatric condition, is itself indicative of the Applicant's ulterior motive.

140. Significantly, the Applicant has not placed on record a single document to demonstrate that she has ever contributed towards the Respondent's medical expenses, facilitated his treatment or taken any steps for his well-being. On the contrary, her denial of the Respondent's well-established medical condition, despite overwhelming medical evidence, demonstrates a conscious disregard for the health and safety of the Respondent. This denial appears to be a calculated position adopted to undermine the necessity of the guardianship and thereby pave the way to control over his assets.

141. The sequence of events also assumes importance. The alleged marriage was never disclosed to the Petitioner or to the family at any point of time and was brought to light only when the Applicant initiated proceedings and annexed purported marital documents. This concealment, when read alongside the Applicant's suppression of tenancy and prior knowledge of the Respondent's condition, indicates a pattern of conduct aimed at creating a legal facade to support future claims over the Respondent's estate. The timing and manner in which the Applicant has asserted the claims suggests that the present proceedings are not bonafide but are a part of a calculated design.

142. The present Interim Application is a strategic attempt to dislodge the existing lawful guardian who has been caring for the Respondent for decades and to substitute the Applicant in that position, not for the purposes of care or protection, but to gain unfettered access and control over the Respondent's estate. In my view, if such an attempt is permitted, it would expose the Respondent, who is already in a vulnerable condition, to serious financial exploitation and risk to his life by neglecting to take care of his health, especially in light of her claims that the Respondent is a person of sound mind and the leg injury which the Respondent was found with had

almost completely been cured. For the aforesaid reasons, question (f) is answered in the affirmative.

143. This now leaves me to deal with the Judgements relied upon by Mr. Rustom Pardiwalla on behalf of the Applicant.

144. Mr. Pardiwalla has referred to the Judgements of the Hon'ble Supreme Court in ***United Insurance Co. Ltd. (Supra) and Smriti Madan Kansagra (Supra)***, in support of his submission that the Court or Tribunal can recall its Order if it is convinced that the Order was obtained by fraud or misrepresentation. In my view, these Judgements do not help the case of the Applicant, as, in my view, the Order dated 24th April 2024 for appointment of the Petitioner as a guardian has not been obtained by any fraud or misrepresentation.

145. Next Mr. Pardiwalla has relied upon the Judgement of the Hon'ble Supreme Court in the case of ***K. D. Sharma (Supra)*** wherein the Hon'ble Supreme Court held that a person who comes to the Court must disclose all material facts, without any reservation, even if they are against

that person, and that he cannot be allowed to pick and choose. In my view, this Judgement also does not assist the case of Mr. Pardiwalla as, in my view, the Guardianship Petition does not suppress any facts. As held by me hereinabove, the so called marriage between the Applicant and the Respondent is *prima facie* not valid, and, therefore, there was no question of the Petitioner disclosing the same in her Guardianship Petition.

146. The next Judgement relied upon by Mr. Pardiwalla is the Judgement of the Hon'ble Supreme Court in ***Municipal Corporation of Delhi (Supra)***. The said Judgement is on the point of granting exemplary costs. In my view, since there is no merit in the Interim Application and it is required to be dismissed, the question of imposing any costs on the Petitioner does not arise. On the contrary, as the Applicant has filed the present Application by suppressing facts and with a view to take control over the assets and properties of the Respondent, the Applicant would be liable to pay costs to the Petitioner.

147. The next Judgement relied upon by Mr. Pardiwalla is the Judgement of the Hon'ble Supreme Court in ***Shrisht Dhawan (Supra)***. In this Judgement, the Hon'ble Supreme Court has defined fraud. Again, in my

view, since there is no fraud or misrepresentation on the part of the Petitioner, in filing the Guardianship Petition, the said Judgement is also not of any assistance to the Applicant.

148. Mr. Pardiwalla has also relied upon the Judgement of the Hon'ble Supreme Court in ***Ram Sarup Gupta (Supra)*** and the Judgement of this Court in ***Anila Rege (Supra)*** in support of the submission that the documents produced by the Petitioner at the time of arguments ought not to be taken into consideration in view of the fact that certain documents submitted alongwith the compilation are either irrelevant or are not referred to or relied upon in the pleadings of the Petitioner. In my view, the said Judgement also do not take the case of Mr. Pardiwalla any further. Since this matter is being decided on the basis of Affidavits filed by the parties, I have allowed both the parties to file their respective Compilation of Documents so as not to keep out any material evidence. Therefore, there is no question of not considering the documents filed by the Petitioner just because they are inconvenient to the Applicant.

149. For all the aforesaid reasons, the Interim Application is required to be dismissed. However, as the Interim Application has been filed by

suppressing facts and with a view to obtain control over the assets and properties of the Respondent, who is of unsound mind, in my view, costs will have to be imposed upon the Applicant for filing such an Interim Application. Accordingly, the Applicant will be liable to pay to the Petitioner costs of Rs. 1 Lakh.

ORDER

In light of the aforesaid discussion, and for the aforesaid reasons, the following orders are passed.

a. The Interim Application is dismissed.

b. The Applicant is directed to pay to the Petitioner costs of Rs.1 Lakh, within a period of three weeks from the date of this Judgement.

[FIRDOSH P. POONIWALLA, J.]