

(2017) 10 BOM CK 0075
In the Bombay High Court
Case No : 28269 of 2017

Philomena Leo Lobo

APPELLANT

Vs

Union of India, & Ors.

RESPONDENT

Date of Decision : 13-10-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 10 BOM CK 0075

Hon'ble Judges : Shantanu Kemkar, G.S. Kulkarni

Bench : DIVISON BENCH

Advocate : S.V. Sonawane, Advait Sethna, Kavita Solunke, Aakash Ligade

Judgement

1. By filing this Petition under Article 226 of the Constitution of India, the Petitioner is seeking direction in the nature of Mandamus declaring her as guardian of her husband Mr. Philomena Leo Lobo.

2. According to the Petitioner, her husband is in comatose condition. In support of the averments made in the Petition, the Petitioner has filed the medical certificate dated 21st September, 2017 from Apollo Hospital certifying therein as under

"This is to inform that the patient by name Mr. Lobo has been admitted in Apollo Hospital, Navi Mumbai under my care since 20th August, 2017 currently on bed No. 6006, IP Number ANMIP6535 in B ward. He is suffering from a malignant MCA territory infarction of the left side of the brain and is presently in a persistent vegetative state. Due to his condition, he is unable to speak, sign or communicate in any way. He is being planned for discharge on Tuesday dated 26th September, 2017. He will need continuous monitoring and nursing care at home along with physiotherapy and speech therapy".

3. In order to ascertain the correctness of the averments made in the Petition, this Court on 11th October, 2017 had directed the Sub Divisional Magistrate to

visit the place of residence of the husband of the Petitioner and submit a report in regard to his health condition.

4. In pursuance to the said direction, the S.D.M., Thane visited the place of residence of the Petitioner and her husband and vide his report dated 12th October, 2017 has certified the correctness of the averments made in the Petition. Along with the said report, he has also submitted the relevant documents including photographs of the Petitioner's husband and the medical papers of the Apollo Hospital.

5. Having gone through the medical papers as also the report of the S.D.M, Thane, we find ourself in agreement with the averments made in the Petition and the medical certificate to the effect that the Petitioner's husband Mr. Philomena Lobo is in comatose condition. We have also gone through the affidavit filed by the Petitioner's and Mr. Lobo's daughters namely Lynette William and Tina Gidwani. Both the daughters have stated that their father is in comatose condition and that the Petitioner has spent huge amount for the treatment of their father and she needs money for the expenditures on nursing, medicines, diet and to run household expenses. They have given their no objection for grant of reliefs claimed in the Petition in favour of the Petitioner.

6. Keeping in view the aforesaid affidavits filed by the Petitioner's daughters and the medical report of Apollo Hospital as also the report of the S.D.M., Thane, we allow the Petition in terms of the prayer clause (b) and (c) which reads thus:

(b) That this Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus declaration that the Petitioner Mrs. Philomena Leo Lobo be guardian of her husband Mr. Leo Lobo, who is in comatose condition.

(c) That this Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus directing the Respondent Authorities, all the banks, finance institutes as described in the Schedule I annexed to the Petition to allow the Petitioner to operate /deal with finance affairs of Mr. Leo Lobo."

7. The Petition is disposed of as such.

8. The parties as also the concerned Bank Authorities to act on the basis of authenticated copy of this order.