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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL NO. 70 OF 2026

IN

INTERIM APPLICATION NO. 7713 OF 2025

Jitendra Gorakh Megh,	]	
Son of Gorakh Govind Megh,	]	
Age: 54 years, Occu: Photographer,	]	
R/at. Bungalow No.30, Four	]	
Bungalows Mhada, S.V.P. Nagar	]	
Andheri (West), Mumbai – 400 053.	]	...Appellant/Original Plaintiff

V/s.

1. Gorakh Govind Megh,	]	
Age: 78 years, Occ: Retired IAS	]	
Officer R/at. Flat No.A-502, Amaltas	]	
Co-Op Housing Society Ltd,	]	
Juhu Versova Link Road,	]	
Andheri (W), Mumbai – 500053	]	
2. Purnima Gorakh Megh,	]	
Alias Urmila Umesh Chaphekar,	]	
R/at. Flat No.2, Ground Floor,	]	
Ashiana Sind Maharashtra CHS,	]	
10 th Cross Road, JVPD, Juhu	]	
Mumbai – 400 049.	]	...Respondent/ Original Defendants

Mr. Jitendra Gorakh Megh, Appellant-in-person.

Mr. Aditya Sharma a/w Ms. Mohiteshwari Prasad, Ms. Sumati Gupta, Mr. Amey Pandey i/by Mr. Hitesh Gupta for the Respondent No.1.

Ms. Purnima Megh @ Urmila Umesh Chaphekar, Respondent No. 2 present in person.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 29th July, 2026.

PRONOUNCED ON : 25th August, 2026.

Judgment (Per : Kamal Khata, J) :-

1) The present Appeal challenges the Order dated 17th February 2026 ('impugned Order') whereby the learned Single Judge rejected the Application of the Appellant to refer the Respondent No.1 to examination by a Medical Board as contemplated under Section 105 of the Mental Healthcare Act, 2017 ('MHA, 2017').

2) The Appellant is the son of Respondent No.1. The Appellant has filed a Suit for partition against the Respondent No.1 on 3rd May 2015, seeking his lawful share in the coparcenary ancestral properties. On 1st December 2025 the Appellant moved an Interim Application No. 7713 of 2025 seeking appointment of an independent Medical Board under Section 105 of the MHA, 2017, to examine and assess the mental condition of his father - Respondent No.1 (Defendant No. 1) on the ground that he is suffering from mental illness. It was based on a reply to the Interim Application filed by the Appellant, to which he had annexed a Medical Certificate recording diabetes with recurrent hypoglycemic episodes and associated cognitive symptoms. This Application was rejected by the learned Single Judge by the impugned Order against which is the present Appeal.

3) The Appellant has raised the following questions before this Court:

i. Whether the Learned Single Judge failed to exercise

jurisdiction vested under Section 105 of the Mental Healthcare Act, 2017 by refusing to refer the matter to a Medical Board despite medical material raising a bona fide issue regarding mental capacity?

ii. Whether the statutory mechanism under Section 105 of the Mental Healthcare Act, 2017 can be declined on the ground that the challenge to the medical record has been raised by an adversarial party in pending litigation, when the provisions itself contemplates such challenge by the other party during a judicial process.

iii. Whether the invocation of Section 105 was wrongly treated as a litigation strategy, ignoring its neutral fact-finding purpose to assist the Court and safeguard the rights of the concerned party?

iv. Whether the Court erred in undertaking a medical assessment and concluding that the condition is temporary and reversible, contrary to settled law that such issues require expert evaluation?

v. Whether the expression “hypoglycemic episodes” (plural) was ignored, which clearly establishes a recurrent, continuing condition accompanied by cognitive impairment?

vi. Whether the learned Single Judge erred in law by restricting the scope of Section 105 of the Mental Healthcare Act, 2017 on the ground that Respondent No.1 is actively contesting the suit, when the statute mandates that where proof of mental illness arises during any judicial process and is challenged by the other party, the Court shall refer the matter to the concerned Board?

- vii. Whether mental illness was not assessed in accordance with internationally accepted medical standards, as mandated under Section 3(1) of the Mental Healthcare Act, 2017?
 - viii. Whether authoritative medical guidelines and peer-reviewed studies establish that recurrent hypoglycemia in elderly diabetic patients leads to progressive cognitive decline and dementia, which was disregarded?
 - ix. Whether the withdrawal of an earlier application without adjudication on merits can constitute abuse of process or estopped a subsequent statutory invocation under a distinct statutory framework, in a different proceeding and for different reliefs particularity where the issue is continuing in nature?
 - x. Whether the refusal to order Medical Board examination has resulted in denial of a fair and proper adjudicatory process?
- 4) Mr. Jitendra Megh, who appeared in person, invited our attention to the Medical Certificate and submitted that, the Court ought to have directed the Respondent No.1 to undergo an examination by a Medical Board as per the provisions of 105 of the MHA, 2017.
- 4.1) He argued that, the withdrawal of the earlier Interim Application would not disentitle the Appellant from filing another one since there was no final adjudication on the same. In any event, according to him, the present Interim Application was based on changed circumstances with the distinct legal foundation and was certainly not a repetition.

5) *Per contra*, Mr. Aditya Sharma, learned Advocate appearing for the Respondent No.1 submitted that, the Appeal was yet another attempt by the Appellant to drag the Respondent No.1 into multiple proceedings to cause unsustainable harassment because the Respondent No.1 had procured an eviction Order against him. He submitted that, he had categorically denied any issues of mental illness and the Application is a malicious proceeding nothing else than an abuse of process of the law.

6) We have heard both the parties and have carefully perused the record as well as the impugned Order.

7) The reading of the impugned Order revealed that, the learned Single Judge has succinctly set out the law governing mental illness in India since inception. In paragraph Nos. 8 to 10 he has explained the legislative intent underlying the MHA, 2017. The learned Single Judge has considered the provisions of the MHA, 2017 and correctly analysed the provision and drawn justifiable conclusion in paragraph Nos.17 to 21 that, the Interim Application was nothing but a calculated attempt to deploy the provisions of MHA, 2017 as an instrument of litigation strategy, to secure a decisive advantage over the Respondent No.1 in the pending proceedings. He rightly held that, Section 105 of the MHA, 2017 is intended to operate as a shield for the protection of persons with mental illness and cannot be permitted to be wielded as a sword against them by an adversarial party. We concur with the view of the learned Single Judge and his observation on the Medical

Certificate, which merely records that Respondent No.1 is a diabetic patient who experiences hypoglycemia episodes following insulin administration, manifesting in transient symptoms such as delusions, confusion, forgetfulness, and perspiration. Significantly, we find that the Medical Certificate itself acknowledges that these symptoms are temporary in nature and resolve upon restoration of normal blood glucose levels. We also fully agree with the finding of the learned Single Judge that, episodic and reversible symptoms arising from an underlying metabolic condition cannot, *prima facie*, be equated with or construed as mental illness within the meaning of Section 2(1)(s) of the MHA, 2017. A plain reading of the connotation mental illness under the MHA, 2017 is: a substantial and persistent disorder of thinking, mood, perception, orientation, memory, judgment, behavior, or the capacity to recognize reality or meet the ordinary demands of life, of the kind associated with conditions such as schizophrenia, bipolar disorder, or dementia.

8) We also agree with the learned Single Judge that, the transient and metabolically-induced systems recorded in the Medical Certificate fall manifestly short of this threshold and cannot, by any reasonable construction, be regarded as constituting mental illness within the contemplation of the MHA, 2017.

9) A perusal of the record indicates that, the Interim Application was moved on 1st December 2025 on the basis of a Medical Certificate

annexed by the Respondent No.1 as early as 18th July 2024. Interestingly, the Appellant claims change of circumstances while moving the present Interim Application before the learned Single Judge. A perusal of the Division Bench Order dated 8th December 2025 clearly evinces that, the matter was heard by the Division Bench and reserved for Orders on 17th November 2025. Moreover, the Judges have recorded having personally met both the parties in chambers and had attempted to see if they could bring about an amicable resolution between the father and the son and it was because they failed they heard the parties and passed the Order. It appears that, the Appellant took a cue from the meeting and before the Bench pronounced the Order on 8th December 2025, the Appellant moved the present Application.

10) In our view, it is nothing short of an afterthought and a malicious proceeding invoked to drag the Respondent No.1 who is around 78 years old into several proceedings so that he would give up and succumb to Appellant's demands. Such a conduct by a son against his aged father (suffering from various illnesses) cannot be and should not be tolerated under any circumstances by this Court. He deserves to be severely reprimanded for his conduct. He has clearly abused the process of this Court as contended by the Respondent No.1.

11) The questions raised in the Appeal are entirely irrelevant to the issue at hand for the reasons stated hereinabove. The same are recorded

only for their rejection at its threshold as they do not have any bearing in deciding this Appeal. Thus, we deem it fit to ignore the same.

12) The Hon'ble Supreme Court has held in a catena of decisions that, a party who does not come with clean hands should be thrown out at that stage itself and is not entitled to any relief. Reliance is placed on *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1, where it is held that, a person whose case is based on falsehood has no right to approach the Court and can be summarily thrown out at any stage of the litigation.

13) It is evident that the Appellant had not raised this plea in the earlier Application, in which the Court considered whether an eviction Order could be passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, a Writ Petition decided on 8th December 2025. Notably, those proceedings contain no mention of Respondent No.1 being mentally unstable, although the Medical Certificate now relied upon was already on record at the time. We also inquired of the Appellant whether he relied on any medical opinion, or claimed any expertise in the field, to which he candidly responded in the negative. This only reinforces our view that the present Appeal is nothing but an abuse of the process of the Court. Respondent No. 2, the daughter of Respondent No.1, entered appearance after the matter had already been heard and made no submissions. We therefore express no view in that regard.

14) In that view of the matter, we find that the present Appeal is

nothing but a pernicious attempt by the Appellant to drag the Respondent No.1 in frivolous proceedings. We do not see any reason to delve into various questions posed before us by the Appellant and we entirely concur with the decision of the learned Single Judge. It is well settled that an appellate court will not interfere with the exercise of discretion by the court of first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely, or in disregard of settled principles of law (*Wander Ltd. v. Antox India (P) Ltd.*, 1990 (Supp) SCC 727; *Ramakant Ambalal Choksi v. Harish Ambalal Choksi*, (2024) 11 SCC 351). We find that, the Order is well reasoned and is not in any manner perverse.

15) In that view, the Appeal is dismissed with exemplary costs of Rs.5,00,000/- to be paid by the Appellant to the Respondent No.1 for having caused undue harassment to the Respondent No.1 at the belated stage of his life. Realistic costs must be imposed to ensure that wrongdoers are denied any profit or advantage from frivolous litigation (*Ramrameshwari Devi v. Nirmala Devi*, (2011) 8 SCC 249). We hope that these costs would act as a deterrent for the Appellant in initiating frivolous proceedings and abusing the process of Court.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)