

OD-13

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Extra Ordinary Civil Jurisdiction
ORIGINAL SIDE

ALP.ITL/1/2021

DEEPA ASANI ALIAS DEEPA C ASANI ALIAS DEEPA CHETAN ASANI
-AND-
POOJA C ASANI (PETITIONER)

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 27th July, 2021.

Appearance :
Mr. Rajarshi Dutta, Adv.
Ms. Aryaa Chatterjee, Adv.
Ms. Sara Pavin, Adv.

The Court: The present petition has been filed invoking the powers of the High Court under Clause 17 of the Letters Patent, 1865, for a declaration that one Deepa Asani, alias Deepa C Asani/Deepa Chetan Asani be declared a mentally ill person and/or a lunatic who is incapable of taking care of herself or managing her property. The prayer in the application is for an order appointing the petitioner as the guardian and for taking care of Deepa Asani as a Manager of the properties and estates described in a Schedule to this application. The applicant claims to be the daughter and the sole and surviving heir of Deepa Asani and one Chetan Laxmikant Asani; the latter died intestate on 11th August, 2017.

The interim relief which the petitioner seeks today is an order for holding an inquisition into the mental condition of Deepa Asani at a reputed hospital providing for such facilities and for a report ascertaining the status of Deepa Asani's condition. Relevant documents of the petitioner's Aadhar card and birth certificate shown to the Court establishes that the petitioner is the daughter and the sole and surviving heir of Deepa Asani and her only immediate family member.

Learned Counsel appearing for the petitioner places medical documents from December, 2020 to March, 2021 which show that Deepa Asani has been recommended admission and in-patient treatment. The symptoms warranting such recommendation indicate several manifestations which include not letting anyone enter the house, refusing to take proper food, and feelings of persecution. Deepa Asani has been diagnosed as suffering from bipolar, manic and psychotic disorders. The medical advice in the documents shows an immediate concern for the patient being a danger to self and others and in the high risk category for suicide. A recommendation has accordingly been made for a monetary valuation and creation of the treatment plan. The concerned doctor has strongly urged the appropriate authorities to save the life of Deepa Asani by putting her in a rehabilitation centre.

According to Counsel, the said Deepa Asani was admitted to a rehabilitation centre on 14th March, 2021 and continues to be at the

same Foundation. Counsel further submits that the applicant was away from Kolkata from 2016 to 2020 for pursuing her education during which time Deepa Asani used to live in a house with her extended family and that her condition deteriorated with frequent episodes exhibiting psychotic and paranoid behaviour. Counsel accordingly seeks appropriate orders in aid of the final prayers in the application.

Upon hearing learned Counsel and perusing The Mental Health Act, 1987 which was repealed by The Mental Healthcare Act of 2017, this Court is prima facie satisfied that the said enactments did not contain any enabling provision for a family member to apply for declaratory relief in respect of persons exhibiting behavioural patterns which warrant protection.

The 2017 Act provides for the rights of persons who are being treated in mental healthcare establishments and guidelines for the functioning of these establishments. Clause 17 of the Letters Patent for the High Court of Judicature at Fort William in Bengal, appears to be the only answer in such cases where High the Court has the authority to intervene in cases in relation to persons and estates of infants, idiots and lunatics within the jurisdiction vested with the High Court. (Clause 17 is set out below:)

“Clause 17 : Jurisdiction as to infants and lunatics-And we do further ordain, that the said High Court of Judicature at Fort William in Bengal

shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the Bengal Division of the Presidency of Fort William as that which was vested in the said High Court immediately before the publication of these presents.”

Since the petitioner is the only legal heir of Deepa Asani, this Court considers it fit to pass appropriate orders upon being satisfied, prima facie, from the material on record that Deepa Asani is indeed in a critical mental condition and requires sufficient protection from the applicant who is her sole surviving legal heir.

It is relevant to trace the use of the word ‘Inquisition’ to The Mental Health Act, 1987, under which an application for judicial inquisition could be made by a class of persons for ascertaining the mental condition of a mentally ill, who holds property, for a direction for admission of that person in a psychiatric hospital. Clause 17 of The Letters Patent evokes the power of the High Court as a guardian-protector to preserve the rights of those who are disenfranchised - by way of mental incapacity - to approach the courts. Barring the words which are seen as inappropriate in the present times, it is a wonderfully inclusive provision which empowers the High Court to take up the cause of persons on the periphery of society.

There shall accordingly be an order directing Calcutta Pavlov Hospital to hold an inquisition into the mental condition of Deepa Asani and file a report in respect of the same within a period of four weeks from date. The arrangement and expenses for such inquisition and examination shall be borne by the petitioner. The report shall be filed in court when the matter is taken up next which will be after four weeks from today.

(MOUSHUMI BHATTACHARYA, J.)