

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO. 12047 OF 2021**

Sonia Fazal Khan & Ors ...Petitioners  
*Versus*  
Union of India & Ors ...Respondent

**WITH  
INTERIM APPLICATION NO. 2411 OF 2021  
IN  
WRIT PETITION (L) NO. 12047 OF 2021**

Asif Fazal Khan ...Applicant  
*In the matter between*  
Sonia Fazal Khan & Ors ...Petitioners  
*Versus*  
Union of India & Anr ...Respondents

ASHWINI  
HULGOJI  
GAJAKOSH

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**Mr Nikhil Wadikar, i/b Ganesh Dhonde, for the Petitioner.**  
**Mr Maneesh Trivedi, i/b LR & Associates, for Intervenor/Applicant**  
***in IA/2411/2021.***  
**Mr Adavit Sethna, i/b Anusha P Amin & Tanay M Mandot, for**  
***Respondent No. 1-UOI.***  
**Mrs Uma Palsuledesai, AGP, for State.**

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**CORAM G.S. Patel &  
Madhav J. Jamdar, JJ.**  
**DATED: 16th March 2022**

**PC:-**

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1. The 1st Petitioner, Sonia Fazal Khan, is the wife of one Fazal Khan. Petitioners Nos. 2 and 3, Naeema and Tasneem, are Sonia's and Fazal's married daughters. The Petition says that for the last decade Fazal has been living in a vegetative state. He not only has dementia but has had multiple strokes. There are other complications. The prayer in the Petition is to appoint his wife, Sonia, the 1st Petitioner as the guardian of the Fazal's personal and property.

2. In previous orders in other cases we have noticed that there is no structured provision in law as yet to deal with these situations. There are some indications in the Disabilities Act and in similar statutes but a comprehensive statute dealing with these situations and allowing pro-tem guardianship is not yet in place. We refer to our decision of 13th December 2021 in *Lubina Mohamed Agarwal and Anr v Union of India and Ors*. In paragraph 19 of our order dated we granted interim relief but subject to certain safeguards. We propose to adopt the same principle here.

3. First, as to Fazal's condition. There is a reasonably recent clinical report of 1st October 2021. The report was submitted to this Court pursuant to an order of 25th August 2021 (Ujjal Bhuyan and Madhav J Jamdar, JJ). The report tells us that Fazal has dementia, very likely due to a multi-infarct state dating back to 2011. He has pneumonitis and bed sores. He has been hospitalized often. He is totally bed-ridden. He is administered oxygen nasally. He has spontaneous eye movements but cannot maintain eye contact,

He cannot speak, understand, sign, move his right side or take any decision. He is totally dependent on his care-givers. He is fed through a Ryles tube. He has Foley catheter. His brain MRI of July 2006 suggests a diffuse cerebral atrophy with this multi-infarct stage.

4. The schedule-I at page 103 sets out the quite considerable items of monthly expenditure and the amounts being spent.

5. At present we are concerned with two assets. One is a bank account with the Saraswat Bank. This is bank account No. SBGen/013200128869846. It is with the Old Military Road, Marol, Andheri (East) Branch. It stands in the name of Fazal Khan as the first holder. Sonia is the only joint holder.

6. The other property in question is the residential flat shown at page 104, viz., flat No. B/607, Mayur Tower, CHSL, old Military Road, CTS No. 258, Village Marol, Andheri (East), Mumbai 400 059.

7. At this stage we note that there is a Intervention Application by one Asif Fazal Khan. He lives elsewhere at another address. He seeks leave to intervene. He says that he is the “de facto” guardian of Fazal for many years. There is absolutely nothing in his application to show this. Although the Petition by Sonia and her daughters annexes a large number of documents showing expenses and bills paid by Sonia and in Sonia’s name, there is not one scrap of paper adduced by Asif in support of his contention.

8. Asif then says that although his parents are alive, there are two flats and both are what he describes as “ a shared household” and therefore he, the son, has some sort of enforceable legal right or entitlement to either or both of these flats. The submission is so ill-founded and illogical that it only needs to be stated to be rejected. In any conceptualization of succession law for any community or faith, Asif can have no right, title or interest whatsoever in either of these flats — one in his father’s name and other in his mother’s name — so long as his parents are alive. The suggestion that Asif has a settled and enforceable share in either of the flats in the lifetimes of the real owners, his parents, is laughable. The fact that he is their son does not make either of their flats ‘a shared household’.

9. The fact that Asif may have been advised (or ill-advised) to adopt some domestic violence proceedings against his sisters is utterly immaterial. We do not see how Asif can complain of domestic violence when he is demonstrably not part of the domestic set-up to begin with.

10. Asif has no rights in his father’s flats. He has nothing to show that he has ever cared for his father.

11. We are not seeking Asif’s consent to the order we make. We do not need it. We are rejecting his application for intervention. We reject his contention that his mother has an ‘alternate remedy’. That submission alone shows us Asif’s true nature, his utterly heartless and avaricious approach. His Interim Application is dismissed.

12. We permit the Petitioner No. 1 Sonia Fazal Khan to operate the Saraswat Cooperative Bank account mentioned above. It stands in the joint name of Fazal Akbar Khan and Sonia Fazal Khan. She may draw on the amounts in this account to meet all and any of Fazal's expenses. She is not permitted to use any of these amounts for her own personal purposes nor to transfer these amounts to her own account. She is required to maintain accounts including receipts of all payments made from this account whether by cheque, transfer or against cash withdrawals. Once a year, Sonia is required to file a statement of account regarding the draws from the account.

13. As regards the immovable property described at page 104 we are told that Sonia proposes to sell this flat along with the adjacent flat that is her own name so that the proceeds can be used to look after Fazal for the future.

14. We permit Sonia to open negotiations for any prospective purchaser and to conclude negotiations arriving at a price and on terms but not to execute either an MoU or an agreement for sale without prior leave of this Court. That leave must be obtained on a proper Interim Application. In that Interim Application, full details of the proposed transaction must be disclosed. The identity of the buyer, the consideration, mode of payment, time of payment and a draft of the proposed that given to sale must all be annexed.

15. The reason we make this requirement is that, although there is no specific statute in this regard, we put the case of Fazal practically on the same footing as that of a minor who holds a share

in immovable property. This necessarily means that Fazal's interests are under the care and supervision of the Court and any disposal of his share in any immovable property must be for stated and bona fide purposes that are demonstrably in his interest. It is for this reason that we find ourselves unable to grant an open-ended permission in cases like this. This is however not to be construed as a rejection of what Sonia seeks but only a direction by way of caution and circumspection so that there is no cause of complaint at a later stage.

16. We keep the Petition pending. Liberty to the Petitioners to apply.

**(Madhav J. Jamdar, J)**

**(G. S. Patel, J)**