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**IN THE
COURT OF SESSION
SESSIONS DIVISION, SINDHUDURG
AT: OROS**

[Presided over by Dr Sudhiir M Deshpande]
SESSIONS JUDGE, SINDHUDURG.

Criminal Revision Application No. 39 of 2026
(CNR MHSIo10005622026)

Bharati Sanjay Desai
Age about 65 yrs., Occu.: Retired
R/o House No. 534, Degave
Tal. Sawantwadi Dist Sindhudurg

Applicant

Versus

1. State of Maharashtra
Through District Government Pleader
at Oros, Dist. Sindhudurg
2. Krutika Laxmikant Shintri
Nee Namrata Sanjay Desai
Age about 34 yrs., Occu.: Business
R/o House No 243,
Padve Dhangarwadi
Tal. Sawantwadi Dist. Sindhudurg
3. Madhavi Akshay Kudkelvar
Nee Madhavi Sanjay Desai
Age about 36 yrs., Occu.: Service
R/o. House No. 534, Degave
Tal. Sawantwadi Dist Sindhudurg
4. Rohan Sanjay Desai
Age about 25 yrs., Occu.: Service
R/o House No. 534, Degave
Tal. Sawantwadi Dist. Sindhudurg

Opponents

Appearance:

Mr R D Ambiyé, Ld advocate for the applicant

Mr S A Rane, Ld SPP for the State

Mr Y R Khanolkar, Ld advocate for the opponent No. 2

Mr S M Janvalkar, Ld advocate for the opponents No. 3 and 4

JUDGMENT

(Declared on 28th day of July 2026)

The present Revision Application is preferred against the order dated 15.05.2026 passed in Divyang Application No. 1/2026 by the Sub-Divisional Magistrate, Sawantwadi (“SDM”).

2] Opponent No. 2, a person claiming to be suffering from benchmark disability, filed Divyang Application No. 1 of 2026 before the Ld SDM, Sawantwadi, seeking protection under the Rights of Persons with Disabilities Act, 2016 against the alleged obstruction and harassment caused by the revision applicant and other family members in relation to her residence. By order dated 15.05.2026, the SDM issued certain directions to facilitate her peaceful residence and advised the parties to seek partition before the competent Civil Court. Aggrieved by the said order, the revision applicant initially preferred an appeal before the District Magistrate, which came to be dismissed on the ground of lack of appellate jurisdiction. The revision applicant has, therefore, filed the present revision challenging the legality, propriety and jurisdiction of the impugned order.

3] Mr Ambiyé, learned Advocate for the revision applicant, assailed the impugned order as being wholly illegal and without jurisdiction. He submitted that the proceedings before the SDM were conducted in a grossly irregular manner, as no evidence was recorded and no effective opportunity of hearing was afforded to the opponents. According to him, the original applicant had, in substance, sought a mandatory direction, which the SDM had no authority to grant under the provisions of the Rights of Persons with Disabilities Act, 2016.

4] He contends that Section 7 of the Act does not confer any such power upon the SDM and that such authority, if at all, vests only in an Executive Magistrate. He further argued that the SDM is not an Executive Magistrate and, therefore, lacked inherent jurisdiction to entertain and decide the application. He also alleged that the SDM was biased against the opponents and falsely recorded in the impugned order that the opponents had filed written arguments, though no such written submissions were ever tendered. According to the learned counsel, the power to grant a mandatory injunction is exclusively vested in a competent Civil Court and cannot be exercised by the SDM. Hence, the impugned order, having been passed by assuming a jurisdiction not vested in the authority, is a nullity.

5] He further points out that the operative part of the order purports to have been passed under Section 9 of

the Act, though no such power is traceable thereunder. He also submitted that the provisions of Section 38 of the Specific Relief Act, Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, and the Maintenance and Welfare of Parents and Senior Citizens Act were completely overlooked by the SDM. When queried by the Court as to why several of these contentions were not specifically pleaded in the revision application, learned advocate responded that the present proceedings are not civil and, therefore, questions relating to jurisdiction and legality can be urged during arguments even if they are not expressly incorporated in the revision petition. He, therefore, prayed that the impugned order be set aside as being wholly without jurisdiction.

6] Mr Khonolkar, learned Advocate for opponent No. 2, opposed the revision and submitted that the scope of revisional jurisdiction is extremely limited. He contends that the additional documents produced by the revision applicant cannot be considered at this stage. Inviting attention to Section 14(1) and Section 14(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), he submitted that both the District Magistrate (DM) and the SDM are Executive Magistrates. According to him, the District Magistrate rightly dismissed the appeal by holding that the SDM is of equivalent status for the impugned proceedings and, therefore, the District Magistrate could not act as an appellate authority over the SDM. He submitted that, if at all any appeal was maintainable, the applicant ought to have preferred it before the competent

appellate authority and not invoked the revisional jurisdiction of this Court.

7] He further argues that Section 84 of the Rights of Persons with Disabilities Act, 2016 relates exclusively to the constitution of Special Courts for offences under the Act and, therefore, does not provide any remedy to the applicant in the present case. According to him, the last part of clause (3) of the operative order cannot be construed as an injunction in the strict legal sense; rather, it is merely a facilitative direction intended to ensure the peaceful residence of the original applicant. He submitted that the impugned order must be read as a whole and not by isolating individual clauses.

8] He further contends that the SDM rightly advised the parties to seek partition before the competent Civil Court while simultaneously exercising jurisdiction under Section 7 of the Rights of Persons with Disabilities Act, 2016 to protect the rights of the disabled person. Lastly, he submitted that the three authorities relied upon by the revision applicant do not deal with proceedings under Sections 7 or 9 of the Rights of Persons with Disabilities Act, 2016 and are, therefore, clearly distinguishable and inapplicable to the facts of the present case.

9] Rival contentions now fall for my consideration. The following points have arisen for my determination on which I have given my findings based on

reasons on considering the documents and arguments.

Points	Findings
1. Whether the procedure adopted by the SDM in passing the impugned order suffered from any illegality, material irregularity or violation of the principles of natural justice?	Yes.
2. Whether the order passed by the SDM is correct, legal, and proper?	No.
3. What order?	Revision application partly allowed to the extent of remanding matter to the SDM for fresh hearing.

REASONS

As to Point No. 1:

10] The revisional jurisdiction under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is supervisory and not appellate in nature. The object of the provision is to enable the Revisional Court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order passed by a subordinate criminal court or authority and to examine the regularity of the proceedings. The Revisional Court is not expected to re-appreciate the entire evidence or substitute its own view merely because another view is possible. Interference is warranted only where the impugned order suffers from a

jurisdictional error, patent illegality, material procedural irregularity, perversity, or violation of the principles of natural justice resulting in miscarriage of justice. Thus, the revisional jurisdiction is intended to ensure that subordinate courts and authorities act within the bounds of law and follow a fair and lawful procedure, and not to convert the revision into a second appeal. Keeping the aforesaid principles in view, I now proceed to examine the merits of the rival contentions and the legality of the impugned order.

11] Mr Ambiye argued that the SDM is not an Executive Magistrate. But when this Court enquired, he explained that this Court has jurisdiction u/s 397 (Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398) Bharatiya Nagarik Suraksha Sanhita, 2023, to entertain an appeal against orders passed by an Executive Magistrate. These submissions are inherently contradictory. Moreover, the section 15 of the BNSS clearly indicates that SDM is an Executive Magistrate.

12] The procedure adopted by the SDM suffers from a material irregularity resulting in denial of a fair opportunity to the revision applicant. The roznama clearly reveals that on the last date of hearing, the SDM granted eight days' time on 15.05.2026 to the opponents to produce their documents on record. Having consciously

granted such time, the SDM could not have pronounced the impugned judgment on the very same day (15.05.2026) without permitting the period so granted to expire. Once time is granted by a judicial or quasi-judicial authority, the concerned party acquires a legitimate expectation of being able to avail of that opportunity. By delivering the judgment on the same day, the SDM effectively rendered the order granting time meaningless and deprived the opponents of the opportunity to place their documents before the authority.

13] Mr Ambiye pointed out that the SDM mentioned in the body of the judgment that the opponents No. 1 and 3 filed their oral and written arguments and gave a gist of the same. Mr Ambiye argued this is totally out of context and false. He clarifies that the opponents No. 1 never made any written argument. This gets corroboration from the absence of entry in the roznama to that effect. The roznama must reflect the documents filed by parties. Absence of such an entry gives a presumption that no documents were filed.

14] Such a course amounts to a material procedural irregularity and constitutes a violation of the principles of natural justice, particularly the rule of *audi alteram partem*. The irregularity goes to the fairness of the decision-making process and vitiates the impugned order irrespective of the merits of the controversy. Hence, I answer point No. 1 in the affirmative.

As to point No. 2:

15] The record demonstrates that the SDM committed a material procedural irregularity by granting the opponents eight days' time to produce their documents and thereafter pronouncing the judgment on the very same day without allowing the granted period to expire. Such a course deprived the opponents of the opportunity expressly extended to them and amounts to a violation of the principles of natural justice. Therefore, the impugned order cannot be held to be correct, legal and proper.

16] Further, the revision applicant has raised several factual and legal contentions including the jurisdiction and competence of the SDM, before this Revisional Court which could have been effectively canvassed before the SDM had a reasonable opportunity been afforded to the applicants to file their reply, produce relevant documents, and advance their oral and written submissions. However, by pronouncing the impugned order on the very day on which eight days' time had been granted for filing documents, the SDM denied the applicants an effective opportunity to present their case. Hence, I answer the point No. 2 in the negative.

As to point No. 3:

17] In the facts and circumstances of the present case, the ends of justice would be best served by setting

aside the impugned order and remanding the matter to the SDM for a fresh decision in accordance with law. The defect in the impugned proceedings is essentially procedural, arising from the denial of a reasonable opportunity to the revision applicants to file their reply, produce documents and advance their submissions despite having been granted time for that purpose. The applicants have raised several factual as well as legal contentions which deserve consideration by the competent authority in the first instance.

18] At the same time, opponent No. 2, being a person with disability, is equally entitled to have her grievances adjudicated expeditiously on their own merits. A remand would, therefore, neither prejudice the rights of either party nor amount to expressing any opinion on the merits of the dispute. On the contrary, it would ensure adherence to the principles of natural justice, afford both sides a full and fair opportunity of being heard, and enable the SDM to pass a reasoned order after considering the pleadings, documents and submissions of all concerned. Such a course alone would advance the cause of justice and inspire confidence in the fairness of the adjudicatory process.

19] Mr Ambiye relied on **Shri Sharda Bhavan Education Society v. State of Maharashtra & Anr., 2011(5) ALL MR 275, Sau. Vijaya Narendra Kene @ Vijaya Gangadhar Bhope (Dead Through LRs.) v. Smt. Kamalabai Gangadhar Bhope (Dead Through**

LRs.), 2011(3) ALL MR 363, and Krit Yadav And Ors. v. The State of Jharkhand And Ors., W.P.(C) No. 451 of 2026. However, the occasion to deal with these ratios about the jurisdiction of the SDM, the status of Govt GRs would not arise, since the matter is being remanded. Mr Ambiye shall be at liberty to enlighten the SDM on these aspects.

20] Considering that opponent No. 2 is a person with disability and with a view to maintaining peace, avoiding further complications and multiplicity of proceedings, and protecting her interests until the application is decided afresh, the protective/facilitative directions contained in clause No. 3 of the operative part of the impugned order shall continue to remain in force as an interim arrangement until the SDM passes a fresh order after hearing all the parties. This continuation shall not be construed as an affirmation of the legality or correctness of the impugned order on merits and shall abide by the final decision of the SDM.

21] Hence, I am passing the following order.

ORDER

1. The Revision Application is partly allowed.
2. The judgment and order dated 15.05.2026 passed by the SDM, Sawantwadi in Divyang Application No. 1 of 2026 is hereby quashed and set aside **save** clause 3 of the impugned order.

3. Divyang Application No. 1 of 2026 is remanded to the SDM, Sawantwadi for fresh disposal in accordance with law after affording all parties a reasonable opportunity to file their pleadings, produce documents, adduce such evidence as may be permissible in law, and advance their arguments. The parties shall preferably file their arguments in writing before the SDM.
4. The SDM shall decide the application independently, on its own merits and in accordance with law, without being influenced by any observations made in this judgment, which are confined only to the disposal of the present revision.
5. Clause No. 3 of the operative part of the impugned order shall continue to remain in force as an interim arrangement until the SDM passes a fresh order after hearing all the parties.
6. The parties shall appear before the SDM, Sawantwadi on **13 August 2026** without awaiting any separate notice.
7. The Record and Proceedings be transmitted forthwith to the Court of the SDM, Sawantwadi.
8. Revision Application stands disposed of accordingly.

(Dr Sudhiir M Deshpande)
Sessions Judge
Sindhudurg-Oros

All concerned to act upon digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) **Shital Krushna Dhake v. Krushna Dhake**, MANU/MH0285/2018.