

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

**NOTICE OF MOTION NO. 45 OF 2014
IN
SUIT NO. 3217 OF 2010**

Padmaben Maganlal Kanakia

...Applicant / Orig.Deft.No.2

In the matter between

Nikhil Maganlal Kanakia & Anr.

...Plaintiffs

vs.

Maganlal Nandlal Kanakia & Ors.

...Defendants

Mr.Harshad Parekh for Plaintiffs.

Mr.Nitin Thakkar, Senior Advocate with Ms.Dipti Panda with Ms.Amita Jasani,
Ms.Dharmika Patel i/b. Purnanand & Co. for Defendant No.4.

CORAM : S.C. GUPTE, J.

7 DECEMBER 2015

P.C. :

This Notice of Motion is taken out by Original Defendant No.2 seeking distribution of the amount of Rs.65 lakhs lying in fixed deposit accounts mentioned in Exhibit-2 of the affidavit in support of the Notice of Motion along with accrued interest, in accordance with the Trust Deed dated 3 October 1942.

2 Both the Plaintiffs as well as Defendant No.2 (who is the mother of Plaintiff No.1 and grand-mother of Plaintiff No.2) and Defendant No.3 (who is the brother of Plaintiff No.1 and uncle of Plaintiff No.2) as also one Pratima (who is the sister of Plaintiff No.1 and Defendant No.3) and one Meera Sameer Mody (who is the sister of Plaintiff No.2) are beneficiaries of a private trust, which was created by the grand-father of Plaintiff No.1 and Defendant No.3, one Nandlal Kanakia. This trust was created under a Trust Deed dated 9 October 1942. It is common ground that after the death of Maganlal Kanakia (the father of Plaintiff No.1 and Defendant No.3), the corpus of the trust was to be distributed amongst the beneficiaries. Maganlal died on 6 April 2013. The persons mentioned above are admittedly the beneficiaries of the trust amongst whom the corpus now needs to be distributed. Though there is some dispute between the parties as to the

immovable property, which is claimed to be the property of the trust by the Plaintiffs, as far as the fund of Rs.65 lakhs kept in fixed deposit is concerned, there is hardly any dispute. This amount will have to be distributed between the beneficiaries in the proportion provided for in the Trust Deed dated 3 October 1942. It is agreed between the parties that the fixed deposit of Rs.65 lakhs, which together with accrued interest as of 15 October 2015, aggregates to Rs.69,82,079/-; and that this amount together with further accrued interest on the respective fixed deposits from 16 October 2015 shall be prematurely withdrawn by the parties and distributed amongst the beneficiaries in the proportion provided for in the trust deed.

3 Accordingly, the trustees are permitted to break the fixed deposits lying with Saraswat Bank with a view to distribute the corpus among the beneficiaries. The trustees shall ascertain the exact amount from Saraswat Bank and work out the proportion of distribution in accordance with the trust deed and pay all the beneficiaries accordingly. As far as the immovable property, namely, flat Nos.601A and 602, is concerned, learned Counsel for Defendant No.2 states that his client shall not create any third party rights in respect of these flats hereafter without seeking appropriate orders from the Court. So also, there will be an injunction against Defendant Nos.3 and 4 restraining them from creating third party rights in respect of these flats without obtaining suitable orders from the court.

4 The Motion is disposed of accordingly. Liberty to the parties to apply in case of any difficulty.

5 Defendant Nos.2, 3 and 4 are permitted to file their written statement. The same is taken on record. The suit shall appear on board for framing of issues on 22 December 2015.

6 Parties to act on the authenticated copy of this order.

(S.C. Gupte, J.)