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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

NOTICE OF MOTION NO.25 OF 2015

IN

PETITION NO. 88 OF 1967

Hafiza Begum Syed Hamid Kadri
(since deceased)

...Insolvent

Exparte:

Ashrafali Q. Jairajbhoy

...Petitioning Creditor

and

Munira Begum Kadri & Anr.

...Applicants

and

The Official Assignee, High Court, Bombay. ...Respondent

WITH

NOTICE OF MOTION NO.42 OF 2015

IN

PETITION NO. 84 OF 1966

.....

Mr. Jonathan Jose, i/b. M/s. Solomon & Co., for the Applicants.

Mr. M.D. Narvekar, Official Assignee present.

.....

CORAM : S.C. GUPTE, J.

20 OCTOBER, 2015

P.C. :

. These two notices of motion seek disbursement of the surplus amounts of the deceased Insolvents to the Applicants. The Applicants claimed to be legal heirs of the deceased Insolvents. The predecessor-in-interest of the Applicants, namely, Sayed Abdul Hamid Kadri alias Sayed Abdul Hamid Kadri and Hafiza Begum Syed Abdul Hamid Kadri were

adjudged insolvent vide an order passed by this Court on 7 February 1967. Both the Insolvents subsequently died after conclusion of their private and public examinations. Between the year 2005 and 2006, one of the legal heirs of the Insolvents, Sayed Mohd. Shah Kadri, took out notices of motion in the two insolvency petitions praying for annulment of the Insolvencies on the ground of full payment to, and discharge of, all creditors and disbursement of the surplus amount amongst legal heirs of the deceased Insolvents. Vide order dated 21 March 2006, this Court terminated the insolvency proceedings and directed the Official Assignee to hold the assets in the hands of the Official Assignee for a period of 16 weeks within which the creditors of the Insolvents were to be at liberty to obtain appropriate decrees/orders against the estate of the deceased Insolvents or to apply to Insolvency Court for appropriate directions. This order was modified by a subsequent order passed by Insolvency Court on 18 April 2006. The order directed the Official Assignee to handover the assets to the legal heirs of the Insolvents, if no claims were lodged with the Official Assignee within a period of six weeks from 21 March 2006. There is nothing on record to show that any claims were lodged by any creditor with the Official Assignee after 21 March 2006. The Applicants have, thereafter, filed notices of motion Nos.3 of 2012 and 4 of 2012 for enforcement of the orders passed by the Court on 21 March 2006 and 18 April 2006. At that stage, the Official Assignee filed a report stating that unless the Applicants produced either Probate or Letters of Administration or Succession Certificate from the appropriate Court, their rights as legal heirs of deceased Insolvents could not be recognised. The Applicants have since filed a testamentary petition in this Court and have obtained a succession certificate dated 30 April 2015. After obtaining this succession certificate, the Applicants have approached this Court for enforcement of the orders passed by this Court by

disbursal of the amounts held by the Official Assignee to them.

2. In the premises, the motions are made absolute. The Official Assignee is directed to disburse the amounts held by the Official Assignee to the account of the Insolvents to the Applicants after deducting 3% commission payable to the Official Assignee and after obtaining a suitable undertaking-cum-indemnity bond from the Applicants to indemnify the Official Assignee against demands, claims etc.

(S.C.GUPTE J.)