

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 51 OF 2015
IN
TESTAMENTARY PETITION NO. 1133 OF 2014**

Hemant Jayant Shah	...Petitioner
<i>Versus</i>	
HDFC Bank Limited & 3 Ors.	...Respondents

Dr. B. Saraf, *with Mr. Rohan Sawant, i/b Mr. Yogesh Adhia, for the
Petitioner/Applicant.*

Mr. Rohaan Cama, *with Mr. Akshay Doctor, i/b Desai & Diwanji, for
Respondents Nos. 2 and 3.*

Ms. Suvarna Joshi, *i/b Mr. Ashutosh Marathe, for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 13th August 2015

PC:-

1. Two Affidavits affirmed on 10th August 2015 are tendered. One is by Mr. Pravin Mashruwala, Respondent No. 2 and the second is by Ms. Sunita Mohamed, Respondent No. 3. Both Affidavits are taken on file.

2. In paragraph 5 of his Affidavit, Mr. Pravin Mashruwala confirms that the amounts that were in fixed deposit with HDFC

Bank in the joint names of the deceased (the late Shravan Nilkanth Mashruwala) and Mr. Pravin Mashruwala's son, Mr. Ashutosh Mashruwala, and the operating instructions in respect of which account were 'either one or survivor', have been transferred on maturity to Mr. Ashutosh Mashruwala's account. The amount transferred is Rs. 15,00,851/-. Mr. Pravin Mashruwala confirms that he has no objection to the transfer and that he will not hold the Petitioner, who claims to be the executor of the Will under challenge, liable or responsible for this transfer of funds to Mr. Ashutosh Mashruwala. A similar statement is made by Ms. Sunita Mohamed, Respondent No. 3. Mr. Ashutosh Mashruwala himself is personally present in Court and confirms and acknowledges the fact of this transfer into his account.

3. The Will makes a bequest *inter alia* in respect of the deceased's library. This is said to comprise about 300 books. The bequest is in favour of one Mr. Shailesh Parekh from Ahmedabad. Both sides agree that without prejudice to their respective rights and contentions and without the Defendants in any way accepting the Will, the books may be given to Mr. Shailesh Parekh. He will arrange for their collection from the deceased's flat, i.e. Flat No. 5C/503, 5th Floor Alica Nagar Cooperative Housing Society Limited, Akurli Road, Kandivali (East), , Mumbai - 400 101.

4. Both sides also accept that there is a nomination by the deceased in favour of Mr. Ashutosh Mashruwala in respect of the Alica flat.

5. Both sides agree that the flat should be given on leave and license for the benefit of the estate. It is also agreed that Mr. Ashutosh Mashruwala will be at liberty to identify and bring forward a licensee to whom the flat can be given. However, the execution of the license agreement will be made by the Court Receiver who is appointed for the limited purpose of execution of that document. By way of abandon caution, it is clarified that the Receiver is not appointed of the flat itself.

6. From the license fee received, the Receiver will first disburse the society dues and outgoings in respect of the flat in terms of the license agreement, including arrears, if any. The Court Receiver will make the necessary disbursements within ten days of his being informed of the amounts due by either side. The Plaintiffs will be at liberty to inform the Court Receiver of the amounts due as arrears. Thereafter, further amounts as necessary will be intimated to the Court Receiver by Mr. Ashutosh Mashruwala or his Advocates.

7. The balance will be retained by the Court Receiver. The surplus, if any, will be invested by the Court Receiver in accordance with the usual practice of that office. Statements of account will be rendered quarterly by the Court Receiver to the Advocates on both sides. Further, should there be any issue in regard to the maintenance or upkeep of the flat or carrying out any essential repairs or renovations and which are required to be paid out of the funds of the Court Receiver, the Court Receiver will be at liberty to seek appropriate orders from the Court after prior intimation to the Advocates for both sides.

8. It is clarified that for convenience neither the society nor the licensee will be required to communicate with the Court Receiver directly. They may address all communications to Mr. Ashutosh Mashruwala who will forward them to the Court Receiver for necessary action with a copy to the Advocates for the Plaintiffs. This is necessary because Mr. Ashutosh Mashruwala had earlier entered a caveat which came to be discharged.

9. By reason of this order, the Plaintiff shall not be deemed to have accepted that Mr. Ashuthosh Mashruwala has any right or entitlement contrary to the terms of the Will that the Plaintiff seeks to propound in the Suit.

10. The Notice of Motion is disposed of in these terms with no order as to costs.

11. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)