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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 64 OF 2014
IN
TESTAMENTARY SUIT NO. 15 OF 2007
IN
TESTAMENTARY PETITION NO. 888 OF 2006

Jigna Jay Kantawala

...Applicant

In the matter between

Reena Sanjay Minz & Anr.

...Respondents /
Org. Petitioners

Mr. Bhavesh Parmar, *i/b S. A. Mailagir, for the Petitioner.*

Mr. Vivek Kantawala, *i/b Vivek Kantawala & Co., for the Applicant.*

CORAM: G.S. PATEL, J

DATED: 9th June 2015

PC:-

1. The Applicant is one of the four executors to the Will dated 28th June 2004 left by one Nitinkumar Madhavji Rangwala who died in Mumbai on 16th May 2006. The present Notice of Motion seeks that the Applicant (“**Jigna**”) be added as a co-Petitioner and that the Probate granted on 22nd April 2003 in respect of that Will be amended to include her name. Jigna also seeks that the later order dated 3rd May 2013 be set aside and that her name be

included in the grant. It may not be necessary to grant all the reliefs in the manner in which they are set out.

2. The Notice of Motion is most vigorously opposed.

3. There is no doubt about the fact that the Applicant was and is one of the named executors in Nitinkumar's Will. It seems that her name was first included in the probate Petition as it was originally filed. It was then deleted. According to Mr. Parmar, learned Advocate for the Plaintiff/original probate Petitioners, it was the Applicant who did not take effective steps either to renounce her executorship or to accept it and act on it.

4. It is not in doubt that under an order dated 21st June 2012, following the deletion of Jigna's name as (original) Petitioner No. 3, notice was ordered to be issued to her. She was served with a citation as required in law, and was called on either to accept or to renounce executorship. A subsequent order dated 5th October 2012 indicates that although the Applicant's Advocate did respond to that notice, it was not in the appropriate form, and the Advocate for the Petitioner submitted that this amounted to a renunciation. On 8th October 2012, the Court noted that the acceptance was not properly made and was not in accordance with Form 114. Jigna was directed to appear in Court either herself or through a properly instructed legal representative and not merely to communicate with the Registry.

5. Jigna was present in Court on 26th November 2012. She claimed that she was not first called upon to accept to renounce the

executorship, and although she could not on her own join the Petitioners, they nonetheless made her a party Petitioner. She claimed that she had at that time objected to this unilateral action by the Petitioners. It was only thereafter that her name was deleted, and she was served and asked either to accept or renounce the executorship. Jigna categorically told the Court that she accepted the executorship. The Court noted this and directed that she be joined as a co-Petitioner to administer the estate jointly with the Petitioners. Her name was to be once again added afresh to the probate Petition. She was to reverify the Petition within a week and she was to attend the Court on Monday, 3rd December 2012 at 11.00 a.m.

6. At this stage, I must note that the order dated 26th November 2012 expressly records that the fourth executor named in the Will had not till then accepted or renounce the executorship. The Court directed the petition to proceed without him.

7. On 3rd December 2012, Jigna was again present in Court. She had till that time not verified the Petition. She was, therefore, directed not to act as an executrix till that was done. The order of 10th January 2013 that followed notes that the four executors are also four of the eight beneficiaries named in the Will. This order specifically notes that the Applicant and the fourth executor are entitled to join in the probate petition. It then says:

“The Petitioners shall amend the probate petition with all necessary amendments accordingly. Both the aforesaid executors shall re-verify the probate petition.

The petition shall proceed for the grant of the probate to all the 4 executors.”

(Emphasis supplied)

8. Finally it seems that on 3rd April 2013, an order was passed saying that since the directions issued on 10th January 2013 had not been complied with, the Petition was to proceed as filed, i.e., without Jigna being a co-Petitioner.

9. Mr. Kantawala, learned Advocate for the Applicant, makes a very limited submission. He says that the Applicant was always present in Court and while it was true that she was directed to re-verify the Petition she could not do so without the Petitioners making appropriate amendment. It was they who were directed to make the amendment, and only they could do so since Jigna was till then not a party to the Petition. According to him, the Petitioners did not make the necessary amendment so there was nothing for Jigna to reverify. This, he says, has resulted in a sort of Catch-22 situation to the prejudice of the Applicant.

10. Mr. Parmar, who opposes the application, submits, in essence, that the Applicant has had more than enough opportunities to join as a co-Petitioner and that she has squandered them all. This, he says, is a deliberate attempt to delay the administration of the estate in terms of the probate. Mr. Kantawala says this is not only incorrect, but illogical. For, as the Court has previously observed, Jigna herself is not only an executor but also a beneficiary and it is in no way in her interest to delay this matter. There is some heft to this submission. Mr. Kantawala submits, and

I think correctly, that it is not possible for Jigna to re-verify the Petition filed by the Petitioners unless the necessary amendment is made in the first place; and that can only be done not by Jigna, but by the Petitioners. Jigna cannot add herself; it is the Petitioners who must, and by the order of 10th January 2013, correctly read, it was they who were required to do so. The subsequent order directing the Petition to proceed *sans* Jigna is not one that should be allowed to continue since Jigna has now, to put it beyond the pale of all controversy, filed the present Application.

11. Mr. Parmar's submission that Jigna be "deemed" to have renounced executorship is not one that commends itself. It has long been settled that there is no such thing as a deemed renunciation. The named executor must renounce executorship in the manner required by Section 230 of the Indian Succession Act.¹

12. It seems to me that there is something of a personality clash or an ego tussle between the Applicant and Petitioners. That is all there is to it. That is no reason to allow the estate to suffer. There is absolutely no ambiguity about the fact that Jigna has accepted executorship. She has said so. She has said so more than once. The Court has noted her statement. She has been present in person several times before the Court. She was present even yesterday when the matter was heard. It is the duty of every executor to apply for and join in the grant of probate and that is all that Jigna seeks. Procedural niceties cannot be allowed to get in the way of such an application. There is no possible prejudice that will be caused to the Petitioners if the application is granted. At the same time certain

¹ *In re: B. Laxmi Shanker & Anr.*, AIR 1941 Oudh 293 (FB); *Samir Chandra Das v Bibhas Chandra Das & Ors.*, (2010) 6 SCC 432.

directions are necessary to ensure that there is no further disagreement or wrangle.

13. It would not be possible for the Applicant to be shown as a Respondent to the Petition and simultaneously to have grant of probate issued in her favour. It would not only be impractical but would also lead to possible prejudice to the estate if the Applicant continued to be separately represented by her own Advocates while simultaneously claiming to be an executor entitled to probate along with the two original Petitioners. It is, therefore, necessary that the Applicant be directed to be joined as a co-Petitioner. This is, in fact, what this Court had earlier ordered and I have been in most respectful agreement with those directions.

14. In this view of the matter, the Application is made absolute in the following terms:

- (a) The delay, if any, in filing this Notice of Motion is condoned.
- (b) The order dated 3rd April 2013 is recalled and set aside.
- (c) The probate granted on 22nd April 2013 is to be amended to include the name of the Applicant as a joint executor of the Will dated 28th June 2004.
- (d) The Applicant will be at liberty, on the basis of an authenticated copy of this order, to apply for the

necessary amendment to the grant of probate. Once that amendment is complete, the probate granted will necessarily also be to the Applicant (along with the two original Petitioners in respect of the last Will and Testament dated 28th June 2004).

15. It is clarified that the department is not to insist on the necessary amendment being moved only by the original Petitioners. That will only result in the cycle repeating itself. In the peculiar facts and circumstances of the case, the Applicant will be entitled to apply for this amendment. The Applicant will execute the necessary vakalatnama in favour of the Advocates on record for the original Petitioners. The Advocates on record for the original Petitioners shall, before the amendment is carried out, issue a vakalatnama for the signature of the Applicant. This is to be done on or before 16th June 2015. The amendment is to be carried out on or before 19th June 2015.

16. Mr. Parmar seeks a stay of the operation of this order. In my view, the application for stay is entirely misconceived. I have only directed that the Applicant be permitted to do that which she is entitled to do in law and which she was earlier allowed to do under an order of the Court. There is no possible prejudice to the Petitioners given the fact that (a) the Applicant is herself undoubtedly one of the four executors under the Will; (b) she is one of the eight beneficiaries under the Will; and (c) it is the original Petitioners who had, without seeking her consent, added her name to the original petition when it was first filed. It is too late in the day now for the Petitioners to try and keep the Applicant out in his

manner. In any case, there is no 'right' that has been adjudicated or determined. Mr. Parmar insists that there are many documents to show that there is a 'deemed renunciation' of executorship by the Applicant. That is incorrect on facts, contrary to the record and entirely untenable in law. The application is rejected.

(G. S. PATEL, J.)