

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1449 OF 2014
IN
APPEAL NO.599 OF 2014
IN
NOTICE OF MOTION NO.138 OF 2012
IN
TESTAMENTARY SUIT NO.29 OF 2012
IN
PROBATE PETITION NO.341 OF 2012**

Shernaz Faroukh Lawyer & Anr. Applicants.
(Orig. Respondent Nos. 1 & 2)

In the matter between

Manek Dara Sukhadwalla Appellant.
(Orig. Defendant No.1)
V/s

Shernaz Faroukh Lawyer
& Ors. Respondents.
(Orig. Plaintiffs)

Mr. D.J. Khambata, Senior Counsel with Mr. Naval Agarwal,
Mr. Parag Kabadi and Ms. Geetanjali Joshi i/b Doijode &
Associates for the Applicants.

Mr. Shantam Singh i/b Duttmenon Dunmorrsett for
Respondent/Appellant.

**CORAM: V. M. KANADE &
A.K. MENON, JJ.**

**DATE: 20th January, 2015
(In Chamber at 2.35 P.M.)**

P.C.:-

1. Applicants have filed this Notice of Motion for clarification of the observations made by this Court in paras 68 and 83 of the judgment and order dated 8th August, 2014. In para 68 of the said order the following observations have been made:-

“68.....When both the contesting parties are agreed on the fact that the estate must enure to charitable purposes, it cannot be gainsaid that a case is made out for appointing administrator.”

Similarly, in the said para 68 it is also recorded as under:-

“68..... Both sides propose that the estate should enure to charitable causes...”

In para 83 of the said order also, this Court has observed as under:-

“83.....More so, when both the parties are of the view that the estate is to enure to charitable purpose.”

2. It is submitted that though the said proposal was made initially by both the parties, it was subject to conditions

which were imposed by each side which were later on not agreed upon and, therefore, this proposal was not accepted by both the parties.

3. The learned Counsel appearing on behalf of the Respondent/Appellant has submitted that Respondent/Appellant would like to file reply and he therefore seeks time. This is opposed by the learned Senior Counsel appearing on behalf of the Applicants on the ground that the Notice of Motion and the affidavit in support of the Notice of motion were served on the Respondent/Appellant on 01/12/2014.

4. The request for adjournment is declined since this Bench is specially constituted for the purpose of deciding this Notice of Motion seeking clarification/modification of the said order.

5. We are of the view that there is some substance in the submission made by the learned Senior Counsel appearing on behalf of the Applicants in the Notice of Motion. We do recollect that both the parties had made that suggestion. However, that was subject to individual conditions which were imposed by both the parties. According to the Applicants, they had submitted that they have no objection if all the properties are given for charitable purposes

provided any independent person is appointed as Administrator and that the Administrator should find out all other properties which are not disclosed. Applicants pointed out that it was also submitted that the said amount should be given to the reputed Charitable Trust subject to the consent of the Respondent/Appellant.

6. We do recollect that Applicants in this Notice of Motion and Appellant and Respondent No.3 in the main appeal have submitted that this was acceptable provided Respondent /Appellant was continued as an executor. It does appear that inadvertently this portion has not been typed in our order dated 8th August, 2014.

7. It is therefore clarified that the observations made in paras 68 and 83 of our order dated 8th August, 2014 are clarified and it is further added that those proposals were given subject to certain conditions which were given by both the parties, which were later on not accepted. The said judgment and order dated 8th August, 2014 is modified to that extent only.

8. Notice of Motion is accordingly disposed of.

(A.K. MENON, J.)

(V.M. KANADE, J.)

