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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 14 OF 2015
IN
TESTAMENTARY SUIT NO. 78 OF 2009
IN
TESTAMENTARY PETITION NO. 551 OF 2009**

Usha B. Shah	...Applicant
<i>In the matter between</i>	
Manoj Navinchandra Shah	...Plaintiff
<i>Versus</i>	
Usha B. Shah & Anr.	...Defendants

Mr. Himanshu Choudhary, i/b Vigil Juris, for the Plaintiff.
Mr. Arvind Rathod, i/b M/s. Arvind Rathod & Co., for the
Defendant No. 2.
Ms. Shilpa Kapil, for Defendant No. 1 / Applicant.

CORAM: G.S. PATEL, J
DATED: 17th February 2015

PC:-

1. The application is by the 1st Defendant, the sister of the deceased. The 1st Defendant contests this probate petition.

2. In this Notice of Motion, the 1st Defendant seeks appointment of an Administrator of the estate of the deceased, i.e., the residential Flat No. 21, “Rajhans” Building, 88, “G” Road, Marine Drive, Mumbai 400 021. She also seeks that the Administrator appointed be directed to invite bids and to give out the flat on leave and license basis, so that it generates some income for the benefit of the estate.

3. The 2nd Defendant supports the 1st Defendant to the extent that the flat be given out on a leave and license basis. Ms. Kapil, learned Advocate for the 1st Defendant is at some pains to point out that there is no money available to the estate even for the upkeep and maintenance of the flat, which continues to deteriorate on daily basis.

4. Clearly, the estate must be protected. The Plaintiff can have no conceivable objection to this. None is stated on affidavit, as no Affidavit in Reply has been filed, although the Notice of Motion was served as long back as November 2014. The Plaintiff opposes the application on the ground that the present application is one under Section 269 of the Indian Succession Act, 1925 and is, therefore, not maintainable. The Plaintiff is in error. The application is for appointment of an Administrator under Section 247 of the Indian Succession Act, 1925 and is properly made.

5. The Court Receiver, High Court, Mumbai is appointed Administrator of the estate of the deceased, i.e., Ms. Mrudulaben Rajanikant Shah. He will proceed forthwith to take charge of the

estate in its entirety, including the residential Flat No. 21, “Rajhans” Building, 88, “G” Road, Marine Drive, Mumbai.

6. The 1st Defendant will initially make available sufficient funds for the purposes of inviting bids for letting out this flat on a leave and license basis for an optimal period of time. The Court Receiver, as Administrator, will issue necessary directions for an advertisement and will then make a report to this Court before the bid is accepted. Administrator’s Report to be filed by the Court Receiver once ready.

7. It is clarified that once the flat is given out on leave and license basis, the 1st Defendant will be entitled to a reimbursement of the initial advance made by her to the Administrator.

8. The Notice of Motion is disposed of in these terms.

9. List the suit for framing issues on 5th March 2015.

(G. S. PATEL, J.)