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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CONTEMPT PETITION NO. 3 OF 2013**

IN

TESTAMENTARY SUIT NO. 49 OF 2007

IN

TESTAMENTARY PETITION NO. 816 OF 2001

Zaitoon Taherali Nalwala

...Petitioner

Versus

Sayed Rehman Haji Abdulla Khan & Ors.

...Respondents

WITH

MISCELLANEOUS PETITION NO. 99 OF 2013

IN

TESTAMENTARY SUIT NO. 49 OF 2007

IN

TESTAMENTARY PETITION NO. 816 OF 2001

Zaitoon Taherali Nalwala

...Petitioner

Versus

Sayed Rehman Haji Abdulla Khan & Ors.

...Respondents

WITH

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 505 OF 2013

IN

TESTAMENTARY SUIT NO. 181 OF 2013

Zoeb Ali Hasanali & Ors.	...Applicants
<i>In the matter between</i>	
Zoeb Ali Hasanali & Ors.	...Plaintiffs
<i>Versus</i>	
Lalit Mulchand Chheda & Ors.	...Defendants

Mrs. A.R. Lambay, *i/b M/s. Lambay & Co., for the Petitioner.*
Mr. R.A. Shaikh, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 28th January 2015

PC:-

1. The Petitioner in the Contempt Petition was the original Caveator and Defendant in Testamentary Suit No. 49 of 2007. The contempt alleged is of the Order and Judgment dated 13th July 2012 by which that Testamentary Suit was disposed of (by Ms. R. S. Dalvi, J). By that order, Letters of Administration were granted to both the Plaintiff as also to Defendant in the Testamentary Suit (viz., the Respondent and the Petitioner respectively in the Contempt Petition before me today).

2. Ms. Lambay, learned Advocate for the Petitioner, contends that there has been some illicit manipulation of the Court records. The name now shown on the Letters of Administration, she claims, is of one Sayed Rehman Haji Abdulla Khan. This person, the Petitioner contends, is a rent collector and his name has been illicitly or fraudulently inserted only at the time of the issuance of the Letters of Administration.

3. The original Petitioner was Sakinabai Hasanali. She was the sister of the deceased, one Taherali Hasanali Nullwalla. Sakinabai passed away during the pendency of the Petition. It is not in dispute that in her place, her nephew one Zueb Ali Hasan Ali was brought on record.

4. I have seen the original records of the Court and these indicate that by series of amendments some one following the other, the name of Sayed Rehman Haji Abdulla Khan was initially shown as the constituted attorney of the original Petitioner Sakinabai Hasanali. There can be no dispute about this. It appears that citation in the matter was served twice, once in 2003 and then again in 2007. The original records in Court indicate also that pursuant to the final order passed by Mrs. Justice Dalvi, the schedule to the petition was required to be amended. There is a reason for this, too and to which I will turn subsequently. That application for amendment was allowed by an order dated 29th August 2011. Time was again extended on 19th September 2011. The amendment was finally carried out on 29th September 2011. Importantly, the reverification at this time was by Shri Sayed Rehman Haji Abdulla Khan in his capacity as the constituted attorney of Shri Zueb Ali Hasan Ali. Ms. Lambay's submission that the name of this person is entered in the record only at the time of issuance of Letters of Administration, appears to be *prima faice* incorrect and ill-founded. His name seems to have been there from the beginning. He was the Constituted Attorney of the substituted plaintiff in the testamentary suit as well. At the time of second service of the citation in 2007 an incomplete or incorrect copy may have been forwarded along with the citation itself. But that does not by itself

suggest any tampering with the record. The final notice issued in the testamentary matter would indicate the existence of the name of Sayed Rehman Haji Abdulla Khan.

5. Mr. Shaikh, learned advocate for the Respondent to the Contempt Petition, is at some pains to point out that every allegations made by the Petitioner are incorrect and without basis. A major portion of the deceased's estate was a tenanted property of some considerable value. Mr. Shaikh's client has found that rents had not been collected for as long as 10 years. It is his client who has put himself to some trouble to collect those rents and of which he has maintained records. At an earlier stage in these proceeding an amount of Rs.4.5 Lakhs has in fact paid as an *ad hoc* amount to the Petitioner, although apparently without the prejudice to her rights and contentions. Mr. Shaikh state that he has already filed a statement of accounts with the Court. An extra copy is handed over in Court to Ms. Lambay today.

6. I must at this stage turned to the question of the amendment to the schedule to the testamentary suit. This was apparently required because in the original Petition Sakinabai Hasanali had not mentioned a valuable immovable property. In fact Sakinabai Hasanali could not have mentioned this because she had no knowledge of it. The original Petitioner in the Testamentary Petition learned of this property only during the cross-examination in the testamentary proceedings during which it was revealed that the Caveator/Defendant (the present contempt Petitioner) had herself executed documents of 2001 conveying that property. What is even more peculiar is that conveyance is in favour of one Lalit

Chheda, a person who is admittedly an attesting witness to a will that was propounded the present Petitioner in opposition to the Letters of Administration.

7. Today Zueb Ali Hasanali and others as heirs of the deceased have brought Suit No. 181 of 2013 *inter alia* against the original Defendant to the testamentary proceedings (Petitioner in the Contempt Petition). They seek to impeach these very documents by which the original Defendant/Caveator/Contempt Petitioner sought to transfer title to Chheda and others. Ms. Lambay contends that these documents were only the completion of a transaction already initiated by the deceased in his life time. I cannot examine that question at this stage. That will have await the decision in the Suit No. 181 of 2013, though it *prima facie* appears that there is something not entirely credible about the document in question especially given that the consideration is a mere Rs.4.65 Lakhs for what is undoubtedly is a very substantial property in Borivli and which the Plaintiffs in that suit have valued at over Rs. 6 Crores.

8. Returning to the question of contempt, I fail to see how the Respondent to the Contempt Petition could even remotely be said to have committed contempt. In fact it is he who *prima facie* seems to have done what is necessary to secure the interests of the estate and to collect the rent. Indeed it appears that the transferee from the original Defendant/Caveator (Ms. Lambay's client) i.e. Chheda has been filing eviction and other proceedings against the tenants of this property. *Prima facie* it appears that the Contempt Petition is a complete abuse of the process of this Court and is thoroughly misconceived. The Contempt Petition is dismissed.

9. There is also a Revocation Petition filed by the original Caveator. As I have noted Letters of Administration were granted jointly to the original Petitioner in the Testamentary Petition as also to the Caveator-Defendant. The grounds for revocation are the same as those in the Contempt Petition. For the same reasons as in the Contempt Petition, the Revocation Petition is also dismissed. There will be no order as to costs.

10. List the Motion No.505 of 2013 in Suit No.181 of 2013 to be listed on 5th February 2015. The only reason for not taking it up today is that the 2nd Defendant to that Suit and in that Motion is not before the Court today.

(G. S. PATEL, J.)