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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 5 OF 2015
IN
TESTAMENTARY PETITION NO. 1898 OF 2014

Prerna Wadhawan ...Petitioner
Versus
Sheeri Mohan & Anr. ...Respondents

Mr. Divekar*, with Ms. Ashwini Pawar, i/b M/s. Divekar & Co., for the Plaintiff.*
Mr. Abhishek Singh*, i/b MAG Legal, for Respondent No. 1.*
Mr. U.S. Shetty, *for Respondent No. 2.*
Mr. Vikram Deshmukh, *i/b ANB Legal for Intervenor.*

CORAM: G.S. PATEL, J
DATED: 20th March 2015

PC:-

1. The 2nd Respondent has tendered an affidavit in reply. It is taken on record.

2. The Notice of Motion can be disposed of with the following order which is agreed to by all.

3. The Audi A6 vehicle No. UP-14-BM-7340 is an asset of the estate of the deceased. It has been in a garage for repairs for some time. It was taken on a hypothecation arrangement with the 2nd Respondent, the Corporation Bank. Since November 2014, the EMI payable to the 2nd Respondent have been paid by the son and daughter of the deceased, viz., Raghav Wadhawan and Shiffali Wadhawan. The total amount paid by way of instalments is Rs. 2,55,000/- till March 2015. The outstanding dues to the 2nd Respondent–Bank as on 28th February 2015 are Rs. 13,19,798/- as per the affidavit in reply of the 2nd Respondent.

4. The widow of the deceased, i.e., the 1st Respondent, submits that she should be entitled to take over the loan to the Bank and to use the car, on her undertaking to refund to the son and daughter the amount of EMI paid by them and also on undertaking to discharge the outstanding liability of the 2nd Respondent–Bank.

5. There seems to be no agreement on this proposal by the 1st Respondent. The 1st Respondent cannot claim any exclusive title to the vehicle. It remains an asset of the deceased's estate. The primary consideration must be the interest of the estate of the deceased.

6. The vehicle will, consequently, be sold by auction. The Court Receiver, High Court, Bombay will depute a suitable person to conduct this auction after inviting bids. The 1st Respondent, Raghav Wadhawan and Shiffali Wadhawan will all be entitled to bid. If, Raghav or Shiffali Wadhawan bid for the vehicle, they will be entitled to adjust the amount, if any, that each of them has paid as EMI to the 2nd Respondent–Bank.

7. From the proceeds realized, the dues of the 2nd Respondent–Bank upto the date of the sale, but without any additional charges for a premature closure of the hypothecation account, will be paid to the 2nd Respondent–Bank. Should Raghav and Shiffali Wadhawan not be successful bidders, then, out of the proceeds realized the amounts paid by them as EMI without interest shall be refunded and this refund shall be made to the accounts from which these EMIs were paid. The remainder shall be retained by the Prothonotary & Senior Master to the credit of the petition and the amount will be invested in a fixed deposit with any nationalized Bank initially for a period of one year and shall be renewed thereafter for like periods till further orders of the Court.

8. The Court Receiver is directed to make a report in relation to the bids received after the notice is issued before confirmation of the sale.

9. In addition, the Court Receiver will also call for the details of the amounts due to the garage, namely, Regent Garage Private Limited. The repair bill and other charges of Regent Garage Private Limited will also be paid out of the sale proceeds of the vehicle.

10. It goes without saying that the notice inviting bids will have to be issued in newspapers in the NCR since the car is in a garage in that area.

11. The Court Receiver is directed to issue the advertisement within a period of three weeks from today.

12. The Notice of Motion is disposed of in these terms. No costs.

(G. S. PATEL, J.)