

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 3768 OF 2015

Dr.Shubhada Mithilesh
R/at 8212, Ridgelea Street,
Dallas TX 75209, USA.

2. Mrs.Vibha Jaysinghe,
R/at: 7389 Murrayfield Dr.,
Worthington OH 43085 USA
Both petitioners through their
Power of Attorney holder
Mr.Dinesh Dhundiraj Barve,
R/at: 417/2, Narayan Peth,
Yogendra Society, Pune – 411 030.

... Petitioners

v/s

1. Mr.Prabhakar Deolankar
33. Mrs.Abha Dastane – Rao
34. Mrs.Sucheta Narayan Dastane,
Res. No.33 and 34 at :
248, Travis Trail, Maminville,
TN 37110, USA.
35. Maharashtra Executor and Trustee
Company Pvt. Ltd.,
1st floor,m 568, Kesariwada,
Narayan Peth, Pune – 411 030.

... Respondents

Mr.P.R.Arjunwadkar along with Hemant Ghadigaonkar for the
petitioners.

Mr.S.N.Chandrachud for Resp. No.1.

Mr.Pramod Pawar for Resp. No.35.

Ms.Abha Dastane – Rao, Resp. No.33 in-person for herself and as C.A. Of Respondent No.34.

Coram: N.M. Jamdar, J.

Dated: 28 September 2016

ORAL ORDER:

Heard learned counsel for the parties.

2 Learned counsel for the Petitioners seeks leave to delete the unrepresented Respondents as, according to the learned counsel for the parties and Respondent No.33, these Respondents are not necessary for the order that is proposed to be passed and the adjudication in this petition. Leave to delete the unrepresented Respondents accordingly. Amendment to be carried out during the course of the day.

3 By this petition, the Petitioners have challenged the order passed by the learned Civil Judge, Senior Division, Pune, dated 24 July 2014 and has asked for certain directions to Respondent Nos.1 and 35. Petitioner Nos.1 and 2 and Respondent Nos.1 and 35 are Respondents in the Miscellaneous Application No.21 of 2008. On 26 April 2006, Dr.Narayan Ganesh Dastane expired survived by his daughter, widow, Petitioner, Respondent No.33 and 34. It is their grievance that Respondent No.1, who was appointed as an executor of the property of their deceased father, did not give proper response

and was avoiding to work as an executor. In these proceedings, an application was taken out directing Respondent Nos.1 and 35 to hand over the properties. During the pendency of the proceedings the application was rejected by an order dated 24 July 2014. Thereafter the present writ petition was filed.

4 This petition has been pending in the file of this Court and has been adjourned from time to time. When the petition came up on board on 29 August 2016, the following order was passed :

'P.C.:

Learned counsel for the Respondent No.1 states that the executor is ready and willing to hand over the entire bequeath to the Petitioners and Respondent Nos.33 and 34, subject to furnishing the security bond/surety, pending the disposal of the main matter. He submits that, furnishing of such security will be without prejudice to the rights and contentions of the parties.

2. Learned counsel for the Petitioners as well as Respondent Nos.33 and 34 seek time to consider the proposal given by the learned counsel for the Respondent No.1.

3. Stand over to 21 September 2016, under the caption 'for Directions'.'

Learned counsel for Respondent No.1 had made a statement as above. Learned counsel for the Petitioners as well as Respondent Nos.33 and 34 had taken time to consider the proposal. The matter was adjourned on 21 September 2014 when the following order was

passed and thereafter the matter is taken up today.

'P.C.:

Learned advocate for Resp. No.1 states that pursuant to his statement recorded in the order dated 29 Augustg 2016 he will give the particulars of what the executor is willing to hand over to the Petitioners and Respondent Nos.33 and 34. The written communication be given to the Petitioners and Respondent Nos.33 and 34 before thenext date. S.O. To 28 September 2016 'for directions.'

5 The learned counsel for the Respondent makes a statement that he is willing to hand over the bequeath and the residue on conditions. Learned counsel for Petitioners and Respondent No.33 in-person, are agreeable to the suggestion of the learned counsel for the Respondent No.1 which is recorded in the order dated 29 August 2016. Since the executor is ready and willing to hand over the entire bequeth and residue subject to furnishing bond and security, the impugned order does not survive, which did not permit the Petitioners to take this course of action.

6 Learned counsel for Respondent No.1 and learned counsel for the Petitioners have placed on record the correspondence exchanged between them. Learned counsel for Respondent No.1 expressed an apprehension that, being an executor, the Respondent No.1 may not be able to carry out certain functions. Learned counsel for the Petitioners points out that though Respondent No.1 being an

executor may have limitations, the learned Civil Judge can pass appropriate orders. Thereafter there is a consensus between the parties as regard handing over the bequeath and residue and only question now remains is working out the modalities.

7 In view of this position, Respondent No.1 will hand over the entire bequeath and the residue to the custody of the learned Civil Judge, and the learned Judge, will thereafter hand over the same to the Petitioners and Respondent Nos.33 and 34, upon such security/surety bond as the learned Civil Judge thinks appropriate.

8 In view of this arrangement which is worked out between the parties, no further orders are required to be passed. Respondent No.1 will hand over the entire bequeath and residue as indicated above to the custody of the learned Civil Judge within a period of three weeks from today. The learned Civil Judge will thereafter take a decision and fix the modality within three weeks thereafter.

9 The writ petition is disposed of accordingly.

10 This arrangement which is arrived at by consensus of the parties is without prejudice to the merits of the rival contentions in the main proceeding which is pending.

(N. M. Jamdar, J.)