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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
MISCELLANEOUS PETITION NO.1 OF 2016

Tehmaas Sorab Gorimaar ...Petitioner
And
Mr. Mansoor Mudar Diwanji ... Respondent

Ms. Kavita A Shah, *for the Petitioner.*
Mr.Rupesh Lanjekar, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 10th March 2016

PC:-

1. In this Petition under the Guardians and Wards Act, 1890, the Petitioner, the father and the natural guardian of one Darayus Tehmaas Gorimaar, a minor today aged about 15 years, seeks an order from this Court for sale of the minor's 1/3rd share in an immovable property in Mumbai.

2. On 29th September 1998, the Petitioner's parents, Sorab and Rhoda Gorimaar, purchased Flat No.23, Girdhar Nivas, Condominium, 5th Floor, 15/17, Shahid Bhagatsingh Road, Colaba, Mumbai 400 005. This residential flat is of about 1333.28 sq.ft. carpet area. The Petitioner's father, Sorab, died on 31st May 1987 leaving behind his widow (the Petitioner's mother), Rhoda, and the

Petitioner as his only heirs and legal representatives. Sorab left a Will bequeathing all his estate to Rhoda. She died on 10th February 2013. The Petitioner was her only heir. Rhoda had made a Will dated 29th May 2012 bequeathing *inter alia* the immovable property to the Petitioner, his wife, Shiraz, and their minor son, Darayus. Letters of Administration with Will annexed have been obtained by the Petitioner.

3. Thus the Petitioner, Shiraz, and their minor son are the only owners of this flat. They each have an equal and undivided 1/3rd share, right, title and interest in that flat. Photocopies of the minor's birth certificate and passport are annexed. The Petitioner, Shiraz and the minor are all permanent residents of USA.

4. The Petitioner proposes to sell the property to one Mansoor Madar Diwanji. The sale price agreed is Rs.5.10 crores. The minor's share is thus Rs.1.70 crores. A valuation report has been obtained and is on record. The minor holds no other property. The Petitioner has undertaken in the Petition itself to invest the minor's 1/3rd share in this Court. Shiraz has filed a consent affidavit. This is Exhibit "F" to the Petition.

5. By an order dated 9th February 2016 the intending purchaser was joined as Respondent to the Petition. The Respondent is represented before me today. On the previous occasion, 8th March 2016, his Constituted Attorney was present in Court. Through this Constituted Attorney, the Respondent agreed that he would deposit the minor's 1/3rd share of Rs.1.70 Crores in this Court. Mr. Lanjekar for the Respondent confirms this on instructions today.

6. I am inclined to allow the Petition with a small modification. By this modification, I propose to allow the Petitioner to invest the amount privately rather than to deposit it in this Court. My reason for doing so is to ensure that the investment fetches the best possible return and is not limited to the relatively low-yield returns that would accrue if investments were to be made by the Office of the Prothonotary and Senior Master. Further, since the Petitioner, Shiraz and Darayus are US residents, it is possible that there might be significant tax benefits to investments made directly rather than through the Court. At the same time I propose to make provision to ensure that the amount set aside for the minor is kept available to him. Ms. Shah for the Petitioner is agreeable to these suggestions.

7. In view thereof, the following order is passed:

(a) The Petition is made absolute in terms of the prayer clauses (a) and (b).

(b) The Respondent will pay the consideration amount for purchase of the said flat by separate instruments ensuring that there is a separate payment instrument for the share of the minor in the sum of Rs.1.70 Crores.

(c) The Petitioner will be at liberty to make a private investment in terms of the letter dated 8th March 2016 from the SBI, tendered by Ms. Shah, taken on record and marked "X" for identification today.

(d) Of the amount of Rs.1.70 Crores, an amount of Rs.70 lacs will be placed in fixed deposit with the SBI at the tax free NRE rate of 7.5% pa for minimum period of 456 days to less than three years, i.e. for a three year term.

(e) The remaining Rs.1 Crore will be placed in a Smart Wealth Assured product of SBI Life (a subsidiary of the SBI Group) which has an anticipated return of 9% tax free over a 10 year horizon. This investment will be for a minimum period of five years extendable up to 10 years.

(f) The original official receipt in respect of both investments will be obtained by the Petitioner from the SBI and will be deposited with the Prothonotary and Senior Master of this Court within a period of two weeks from the date with these investments are made.

(g) As and when these investments matured or, should the need arise, if they are require prematurely encashed, the Petitioner will be at liberty to make an application to Court for return of the receipts to the effect with encashment or repayment.

8. I expect that the minor will require use of these funds, or at least some portion of them, as he approaches college-going age. It is for this reason that I propose not to dispose of the Petition today but simply to adjourn it s*ine die* with liberty to the Petitioner to apply as and when the need for encashment or repayment arises.

9. All concerned to act on authenticated copy of this order.

(G. S. PATEL, J.)