

SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

NOTICE OF MOTION NO. 148 OF 2014

IN

TESTAMENTARY SUIT NO. 82 OF 2014

IN

TESTAMENTARY PETITION NO. 254 OF 2013

Osborne Cecil Lamond

...Plaintiff

Versus

Rusi Burjorji Master & Another

...Defendants

Ms. Sejal Shah, i/b Mr. Sandeep Manubarmala, for the Plaintiff.

Mr. Prashant Tikare, i/b Ms. Zenobia Irani, for the Defendants.

CORAM: G.S. PATEL, J

DATED: 29th August 2016

PC:-

1. The present Notice of Motion by the Defendants is misdirected. It seeks that the Petitioner be made to deposit some license fees that he is said to have received in respect of the license granted of the deceased's flat at Andheri (West), Mumbai 400 053. It is not in dispute that this flat is now in possession of the Defendants. The claim is for deposit of an amount said to have been received by the Plaintiff in the past. The Plaintiff admits having collected some license fees, but only for a period of two months. The Defendants say that the license fees collected were for a longer period. There is no dispute that the amount of license fees is Rs.

24,000/- per month. The Defendants have separately filed a Administration Suit. This relief sought in the present Notice of Motion should be appropriately sought in that Administration Suit. It cannot be sought by the Defendants in a probate proceeding.

2. The Notice of Motion is allowed to be withdrawn with liberty to file a fresh Notice of Motion for the same or similar reliefs in the Defendants' Administration Suit.

3. Since the Plaintiff has admitted receipt of an amount of Rs. 24,000/- per month for two months, that amount is required to be deposited in Court. It will be held to the credit of the Administration Suit. That deposit is to be made within a period of four weeks from today. Upon deposit, that amount will be invested by the Prothonotary & Senior Master in the usual form.

4. An attempt is made by both the Defendants to tender Affidavits in Reply. Neither Affidavit in Reply is taken on record for want of continuous paging. Liberty to the parties to file their respective Affidavits in Reply after correcting the paging.

5. List the Testamentary Suit for framing issues on 13th September 2016.

(G. S. PATEL, J.)