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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
JUDGE'S ORDER NO. ____ OF 2016**

IN

TESTAMENTARY PETITION NO. 649 OF 2016

Priti Deepak Bansode	... Petitioner
<i>And</i>	
Deepak Rajaram Bansode	... Deceased

Mr. Tejas Vora, i/b D.R. Mishra, for the Petitioner.
Mr. Kalpesh Shah, Director of Markss Infotech Ltd. is present.

CORAM: G.S. PATEL, J
DATED: 26th October 2016

PC:-

1. I have heard Mr. Vora for the Petitioner for some length on this Judge's Order. It comes to be made in very difficult circumstances for the Petitioner whose husband passed away on 11th January 2016. The Petitioner has two minor children, a son named Karan, who is today eight years old, and a daughter named Anjali who is nine years old.

2. Her husband had in his lifetime taken a very large loan and given three properties as security. These were Industrial Premises at 72-A, Government Industrial Estate, Kandivali (W), Mumbai – 400

067, a room No. C-18/219, Shubhamkaroti CHS, Near BMC School Charkop, Sector-2, Kandivali West, Mumbai 400 067 and a factory shed at Unit No.177/1, 194/1, Village Gundavali, Tal. Bhiwandi, District Thane. By an order dated 22nd July 2016, I restored an earlier Judge's Order No. 39 of 2016 to file. By that Judge's Order the Petitioner Priti sought to have these properties transferred to her name and to the names of her two minor children to safeguard their interest. At that time no alienation was proposed.

3. What Priti says today is that this debt incurred by her late husband is one on which the interest mounts monthly. She is in no position to service this debt. This will lead to an aggravated situation, making matters exceedingly difficult for her and for her minor children. All three properties are mortgaged to the bank. The bank in question is the New India Co-Operative Bank Limited. What Priti proposes now is that the Industrial Premises at 72-A, Government Industrial Estate, Kandivali (W), Mumbai – 400 067 be permitted to be sold to one Markss Infotech Limited for a price of Rs.6.40 Crores. This involves an alienation of the minors' interest in that property. Mr. Kalpesh Shah, a Director of Markss Infotech Limited is present in Court. A valuation of this property is available and is annexed at page 168 of the Affidavit. The property valuation is reckoned at Rs.6,27,00,000/-. The proposed sale is, therefore, at a rate higher than the valuation. It is true that this will involve an alienation of two minors' interest in the property, but there is never any absolute prohibition against such a sale particularly when a sale is required because of or based on legal necessity. It is settled law that the elimination of a debt or a reduction of liability is precisely

the kind of legal necessity that a Court will recognize in permitting an alienation of a minor's interest by his or her guardian.

4. The departmental objections, therefore, in this regard for securing the minors' interest or for distribution of sale proceeds are waived and are not required.

5. A copy of the MOU between the Petitioner and Markss Infotech Limited is taken on record and marked "X" for identification with today's date. Mr. Vora clarifies that the sale proceeds sufficient to cover the bank's dues will be deposited by the purchaser Markss Infotech Limited directly with the bank, against which the bank will release the title deeds and issue a no-dues certificate.

6. Only in order to ensure compliance, and so that should there be any difficulty with regard to bank this can be addressed on the next occasion, I will keep the matter pending although I am signing the Judge's Order today. The Bank is not made a formal party; I do not see the need for this, given the Petitioner's undertaking.

7. The Judge's Order is itself will be listed for compliance on 2nd December 2016. The Branch Manager or the authorised officer of the New India Co-Operative Bank Limited is directed to act on an authenticated copy of this order and to accept the payment in full satisfaction of the bank's debt.

8. The remaining requisitions regarding the non-furnishing of MOU is met.

9. Office to number the Judge's Order forthwith.

10. Mr Vora clarifies that from the balance proceeds, the Petitioner will pay off pro-rata all other creditors, increasing those whose names are mentioned at pages 152 to 155 of the Affidavit in Support of the Judge's Order.

11. I would be remiss if I did not end this order with a word of appreciation for Mr. Vora and Mr. Mishra. It is heartening to see that they have so readily lent their professional services to what I think is a very just cause. Persons like the present Petitioner are those most in need of our services, from both Bar and Bench. I thank Mr. Vora and Mr. Mishra for their assistance in Court, and, too, for the meticulous preparation of the very comprehensive supporting Affidavit. The matter may seem small, but the manner in which it has been handled is not. This is precisely the kind of conduct of matters we need to see more of; the kind that, more than a thousand 'big' litigations, restores dwindling public faith in our judicial system.

12. All concerned to act on an authenticated copy of this Order.

13. Liberty to apply.

(G. S. PATEL, J.)