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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 56 OF 2015
IN
TESTAMENTARY SUIT NO. 27 of 2012
IN
TESTAMENTARY PETITION NO. 1324 OF 2011**

Shiraz Kurus Bastani	...Plaintiff
<i>Versus</i>	
Ms. Katy Soonawalla & Another	...Defendants

**WITH
NOTICE OF MOTION NO. 47 OF 2012
AND
NOTICE OF MOTION NO. 139 OF 2012
IN
TESTAMENTARY PETITION NO. 1324 OF 2011**

**Ms. Asma Khan, i/ Rustomji & Ginwala, for the Applicants.
Ms. Shlesha Sheth, with Mr. Saahil Bijliwala, i/b FZB Associates,
for the Caveator/Defendant.**

**CORAM: G.S. PATEL, J
DATED: 16th December 2016**

PC:-

1. The Suit is settled. Consent Terms are tendered. These are signed by the Advocates for the parties and the parties, all of whom are present in Court.
2. I am satisfied that the Consent Terms are in order. They have been drawn by the parties of their own volition in reflection of their true intention. They are not contrary to law. The Consent Terms are taken on record and marked “X” for identification. The undertakings in the Consent Terms are accepted as undertakings to the Court.
3. For completeness and ease of reference, a copy of the Consent Terms is appended to this order. Parties will ensure that a soft copy is handed over to the Court Associate by the end today, failing which this order will neither be signed or uploaded.
4. The Suit is disposed of in accordance with the Consent Terms. Drawn up decree dispensed with.
5. I note that paragraph 1 requires an amendment to the Petition. That may be carried out, without need of reverification by 21st December 2016.
6. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
SUIT NO.27 OF 2012
IN
PETITION NO.1324 OF 2011

Petition for Letters of Administration To the property and credits
of NoshirJehangirLelinwala ... Deceased

Ms. Shiraz KurusBastani ... Petitioner/Plaintiff

Vs

Percy PhirozeBhagwagar&Anr ... Caveators/ Defendants

CONSENT TERMS

1. Agreed, Declared and Confirmed that the following persons would be, if alive the legal heirs of Noshir Jehangir Lelinwala (“**the said Deceased**”) in accordance with Entry IV of Part II of Schedule II to the Indian Succession Act, 1925 being the lineal descendants of the children of the paternal grandparents of the said Deceased who have predeceased the said Deceased.

Sr. No.	Name of the legal heirs of the said Deceased	Last known Address	Relationship with the said Deceased	Percentage share in the estate of the said Deceased
1.	Shiraz Bastani	Soonawalla Building. 2nd floor, Khetwadi, 12th Cross Lane, Mumbai 400004	Being the daughter of Mrs.Bachoo bai Sorabji Roowala, daughter of Dhunjisha Lelinwalla and the sister of the late Jehangir Lelinwalla, the father of the said deceased.	2/36
2.	Boman Roowala	Soonawalla Building. 2nd floor, Khetwadi, 12th Cross Lane, Mumbai 400004	Being the son of Mrs. Bachoo bai Sorabji Roowala, daughter of Dhunjisha Lelinwalla and the sister of the late Jehangir Lelinwalla, the father of the said deceased.	2/36
3.	Jeroo Dadachanji	Soonawalla Building. 2nd floor, Khetwadi, 12th Cross Lane, Mumbai 400004	Being the daughter of Dhunjisha Lelinwalla, who was the son of the late Nusserwanji Lelinwalla and the brother of the late Jehangir Lelinwalla, the father of the said deceased.	4/36
4.	Hutoxi R. Shroff	Not Known	Being the daughter of Khorshed Vatcha, who was the daughter of the late Dhunjisha Lelinwalla, who was the son of the late Nusserwanji Lelinwalla and the	2/36

Sr. No.	Name of the legal heirs of the said Deceased	Last known Address	Relationship with the said Deceased	Percentage share in the estate of the said Deceased
			brother of the late Jehangir Lelinwalla, the father of the said deceased.	
5.	Dilshad Shroff	Not Known	Being the daughter of Khorshed Vatcha, who was the daughter of Dhunjisha Lelinwalla, who was the son of the late Nusserwanji Lelinwalla and the brother of the late Jehangir Lelinwalla, the father of the said deceased.	2/36
6.	Katy F. Soonawalla	Ness Baug No. 2, Nana chowk, Mumbai 400 007	Being the daughter of the late Bacha Khajotia, who was the daughter of the late Baimai Bhagwagar, who was the daughter of the late Nusserwanji Lelinwalla and the sister of the late Jehangir Lelinwalla, the father of the said deceased.	3/36
7.	Freny Bhucca	7, Delwick Lane, New Providence, New Jersey, USA	Being the daughter of the late Bacha Khajotia, who was the daughter of the late Baimai Bhagwagar, who was the daughter	3/36

Sr. No.	Name of the legal heirs of the said Deceased	Last known Address	Relationship with the said Deceased	Percentage share in the estate of the said Deceased
			of the late Nusserwanji Lelinwalla and the sister of the late Jehangir Lelinwalla, the father of the said deceased.	
8.	Percy P. Bhagwagar	Prem Court, 4th floor, Behind Jindal Mansion, Peddar Road, Mumbai.	Being the son of the late Phiroze Bhagwar, who was the son of the late Baimai Bhagwagar, who was the daughter of the late Nusserwanji Lelinwalla and the sister of the late Jehangir Lelinwalla, the father of the said deceased.	3/36
9.	Zarine E. Elavia/ Pavri	CusrowBaug , ShahidBhag atsingh Road, Colaba, Mumbai 400 005	Being the daughter of the late Phiroze Bhagwagar, who was the son of the late Baimai Bhagwagar, who was the daughter of the late Nusserwanji Lelinwalla and the sister of the late Jehangir Lelinwalla, the father of the said deceased.	3/36
10.	Aniahta Daruwalla	Sanjana Mansion, 1st floor, forjett	Being the daughter of the late Mrs. Nergis who was the daughter	6/36

Sr. No.	Name of the legal heirs of the said Deceased	Last known Address	Relationship with the said Deceased	Percentage share in the estate of the said Deceased
		Hill, Near Bhatia Hospital, Mumbai 400 007.	of the late Silla Mistry, who was the daughter of the late Nusserwanji Lelinwalla and the sister of the late Jehangir Lelinwalla, the father of the said deceased.	
11.	Sharukh Daruwalla	Sanjana Mansion, 1st floor, forjett Hill, Near Bhatia Hospital, Mumbai 400 007.	Being the son of the late Mrs. Nergis who was the daughter of the late Silla Mistry, who was the daughter of the late Nusserwanji Lelinwalla and the sister of the late Jehangir Lelinwalla, the father of the said deceased.	6/36

2. Agreed, Declared and Confirmed that the parties hereto are not aware as to whether the heirs mentioned at Serial Nos.4 and 5 are living or not and are also not aware of their present addresses. The addresses mentioned against the names of the heirs at Serial Nos.1to 3 and 6 to 11are the last known addresses. Further the parties are not aware of the maternal grandparents of the said Deceased, their children and lineal descendants.

3. By consent, the table set out in para 5 to the above Testamentary Petition be deleted and in its place and stead

thereof, the table set out in para 1 herein be added.

4. Agreed, Ordered and Decreed that with a view to effectively administer the estate of the said Deceased, the parties hereto have agreed that the Petitioner/Plaintiff be appointed as the Administrator of the estate of the said Deceased upon the Hon'ble Bombay High Court passing an order to that effect in the above Testamentary Suit.

5. Agreed, Declared and Confirmed that the following property should be added after Serial No. 1(b) in the 'Schedule 1' to the above Testamentary Petition and consequential amendments thereof should be carried out:

Sr. No.	Details of Immovable Property	Amount
1(c)	50 % leasehold rights in the land forming part of a land known as Gaiwadi along with Coach Factory and which lands situate, lying and being at Girgaum Road without the Fort of Bombay in the registration sub- district of Bombay and registered by the Sub Registrar of Land Revenue and bearing Laughton's Survey No. part of 8050, Collector's New No.545 and Cadastral Survey No.101 of Girgaum Division containing by admeasurement altogether 704.87 sq. yards or thereabouts and assessed by the Assessor and Collector of Municipal Rates and Taxes under D Ward Nos.146 (6), 138(1) and 138(2) Street Nos.182, 194J	Rs.55,389.00

	and 194B Girgaum Road, D-146 (6) 182- 82A Jaganath Sheth Road, Mumbai 400 004	
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6. Agreed, Declared and Confirmed by the Petitioner/ Plaintiff abovenamed that she has till date not in any manner dealt with the estate of the said Deceased.

7. Agreed, Ordered and Decreed that the Administrator appointed as aforesaid shall open a Savings Bank Account in such bank/ branch as mutually accepted/ agreed by the Petitioner and the Respondents in the name of “Noshi rJehangir Lelinwalla Estate Account” or in such other name as may be permitted by the bank (“**Estate Account**”) in the joint names of the Petitioner/Plaintiff and Caveators/ Defendants i.e. Percy Phiroze Bhagwagar and Katy F. Soonawalla.

8. Agreed, Ordered and Decreed that the Petitioner/ Plaintiff shall operate the Estate Account jointly with Caveator/Defendant No. 2 i.e. Katy F. Soonawalla and deposit all amounts belonging / due to the estate of the said Deceased including the sale proceeds of all moveable and immoveable properties of the said Deceased into the said Estate Account. The Petitioner/Plaintiff and Caveator/ Defendant No. 2 i.e. Katy F. Soonawalla shall be further entitled to withdraw amounts from the said Estate Account under the joint signatures of the Petitioner/Plaintiff and Caveator/Defendant No. 2 i.e. Katy F. Soonawalla (being one of the legal heirs of the said Deceased) for the purposes of all expenses required to be incurred by either of them in the course of administration of the estate of the said Deceased. It is expressly agreed between the parties hereto that expenses sanctioned for withdrawal should relate to the estate of the said Deceased and should not be used for any purpose other than those which are required to administer the

estate of the said Deceased including the litigation costs that may be incurred for protection of the estate of the said Deceased and should not be of a personal nature.

9. Agreed, ordered and confirmed that the Petitioner/Plaintiff and/or Caveator/ Defendant No. 2 will be entitled to reimburse herself/ themselves from the estate of the said Deceased for any expenses already incurred/ to be incurred by her/them on behalf of the estate of the said Deceased provided that prior thereto sufficient proof of payment for such expenses is provided by the party who has incurred such costs to the other party and such other party approves the payment of such expense.

10. Agreed, ordered and confirmed that the total amount of legal fees in the captioned matter is capped at Rs.3,00,000/- (Rupees Three Lakhs Only) for the Petitioner/ Plaintiff and the Caveators/ Defendants. The said amounts are only for the total legal fees for the administration and defending the full and complete estate of the said Deceased.

11. Agreed, ordered and decreed that the immovable properties mentioned at Serial Nos.1(a) to 1(c) to Schedule 1 to the above Testamentary Petition shall be sold by the Petitioner/ Plaintiff at or above the market value within a period of 1 year from the date hereof. The Petitioner/ Plaintiff shall prior to concluding the sale communicate the price offered by the Purchaser / Purchasers for each of the said immovable properties to the Caveators/ Defendants who shall be entitled to obtain better offers within a period of 60 days from the date of such communication being received by the Caveators/ Defendants. If the Caveators/ Defendants bring any higher offer/s the Petitioner/ Plaintiff shall sell such immovable property/ properties to the offeror/s of the Caveators/

Defendants.

12. It is further Agreed, Ordered and Decreed that if the price offered by the Purchaser/ Purchasers is much lower than the market value, the said properties shall be sold with the assistance of a broker who has been mutually appointed by the parties hereto in writing at a rate not lower than the price mutually agreed by the parties in writing.

13. It is further Agreed, Ordered and Decreed that the Petitioner/ Plaintiff shall receive the entire consideration for sale of any of the said immovable properties in one shot and will not accept any earnest money or any payment in instalments. The Petitioner/ Plaintiff is entitled to execute Deed of Transfer/Conveyance in favour of such Purchaser/s simultaneously against receipt of the entire consideration.

14. Agreed, Ordered and Decreed that the Petitioner/ Plaintiff shall within a period of 6 months from the date of sale of any immovable property ascertain and pay the capital gains tax, if any, payable on such sale. It is further Agreed, Ordered and Decreed that the Petitioner/ Plaintiff shall deposit the said amount in the Estate Account of the said Deceased and thereafter distribute amongst the legal heirs of the said Deceased as per their respective shares as mentioned in Clause 1 above except those mentioned in Clause 2 above the net sale proceeds within 15 days from the date of receipt thereof, time being the essence of the Consent Terms.

15. Agreed, Ordered and Decreed that the Petitioner/ Plaintiff shall open a Demat Account with such Bank/ Branch which is mutually acceptable to the Petitioner/ Plaintiff and the Caveators/ Defendants hereto in the name of "Noshir Jehangir Lelinwalla Estate Account" or in such other name as may be permitted by the Bank ("**Demat Account**"). The shares owned

by the said Deceased which have been listed at Serial No.II of Schedule 1to the Testamentary Petition ("**said Shares**") shall be first dematted and transferred to the said Demat Account by the Petitioner/ Plaintiff. Agreed, Ordered and Decreed that such Demat of the said Shares to be completed within a period of 6 months from the date hereof, time being the essence of the Consent Terms.

16. Agreed, Ordered and Decreed that the said Shares shall be sold by the Petitioner/ Plaintiff in the Stock Exchange within one month from the date of the same being dematted, time being the essence of the Consent Terms.

17. Agreed, Ordered and Decreed that the sale proceeds received on such sale of the shares shall be deposited in the said Estate Account and shall be distributed by the Petitioner/ Plaintiff amongst the legal heirs of the said Deceased as per their respective shares as mentioned in Clause 1 above except those mentioned in Clause 2 above within 15 days from the date of receipt of the sale proceeds, time being the essence of the Consent Terms.

18. Agreed, Ordered and Decreed that the Petitioner/ Plaintiff shall deposit all the amounts lying in the bank accounts listed at Serial No. III to Schedule 1to the above Testamentary Petition in the Estate Account of the said Deceased as stated in clause 7 of this consent terms and then shall distribute amongst all the legal heirs of the said Deceased mentioned in Clause 1 above except those mentioned in Clause 2 above as per their respective shares as mentioned in clause 1 hereinabove within 15 days from the date hereof, time being the essence of the Consent Terms.

19. Agreed, Ordered and Decreed that the amount held in Fixed Deposits in the companies as listed at Serial No. IV to

Schedule 1 to the above Testamentary Petition shall be firstly encashed by the Petitioner/ Plaintiff and the amount so received shall be deposited in the Estate Account of the said Deceased and shall be distributed amongst the legal heirs of the said Deceased mentioned in Clause 1 above except those mentioned in Clause 2 above as per their respective shares as mentioned in clause 1 of hereinabove within 14 days from the date hereof, time being the essence of the Consent Terms.

20. Agreed, Ordered and Decreed that the foreign currency mentioned at Serial No.V to the above Testamentary Petition shall be returned to an Authorized Dealer within a period of one month from the date hereof and the Indian Rupee equivalent so received shall be firstly deposited in the Estate Account of the said Deceased and shall be distributed amongst the legal heirs of the said Deceased mentioned in Clause 1 above except those mentioned in Clause 2 above as per their respective shares as mentioned in clause 1 of hereinabove within 15 days from the date of such receipt, time being the essence of the Consent Terms.

21. Agreed, Ordered and Decreed that the jewellery mentioned at Serial No. VI to the above Testamentary Petition shall be inspected and checked by the Caveators/ Defendants and shall be sold through the office of K. Wadia & Sons within a period of one month from the date hereof. The amount so received on such sale shall be deposited in the Estate Account of the said Deceased and shall be distributed amongst the legal heirs of the said Deceased as per their respective shares as mentioned in Clause 1 above except those mentioned in Clause 2 above within 15 days from the date of such receipt, time being the essence of the Consent Terms.

22. Agreed, Ordered and Decreed that the articles which

were lying in the Khetwadi House shall be first inspected, checked and verified by the Caveators/ Defendants and then will be sold by the Petitioner/ Plaintiff and the Caveators/ Defendants and the amount received from such sale shall be deposited in the estate account of the Deceased within a period of one month from the date hereof. The amount so received on such sale shall be distributed, amongst the legal heirs of the said Deceased as per their respective shares as mentioned in Clause 1 above except those mentioned in Clause 2 above within 15 days from the date of such receipt, time being the essence of the Consent Terms.

23. Agreed, Ordered and Decreed that the Petitioner/ Plaintiff shall keep the Caveators/ Defendants informed in writing every six months of the progress made regarding the above and shall on a half yearly basis furnish accounts of the estate of the said Deceased to the Caveators/ Defendants together with supportings/ bills/ vouchers and shall also file the Estate Returns with the income tax authorities.

24. Agreed, Ordered and Decreed that the Petitioner/ Plaintiff shall within one month from the date of completion of the administration of the estate of the said Deceased and the distribution of all monies submit Final Accounts to all the heirs as also file the said accounts in this Hon'ble Court.

25. It is agreed and declared by the parties that after the Letters of Administration are granted in favour of the Petitioner/ Plaintiff herein, the Petitioner/ Plaintiff shall give a public notice (cost of such shall be deducted from the estate of the deceased) in 2 newspapers (1 in English Free Press Journal and 1 in Gujrathi Mumbai Samachar) inviting claims from the person/s claiming to be the heirs and legal representatives of the said Deceased. In the event there is no Claimant coming

forward to claim from the estate of the said Deceased within a period of 30 days from the date of the publication, then after deducting the expenses incurred by the Petitioner/ Plaintiff and/ or Caveator/ Defendant No. 2 regarding the estate of the deceased the balance amount shall be distributed amongst the heirs as per their respective shares as mentioned in clause 1 hereinabove. If any genuine claimant approaches the Petitioner/ Plaintiff, then the Petitioner/ Plaintiff shall pay his/her share to such claimant in consultation with the Caveators/ Defendants. If no Claimant approaches the Petitioner/ Plaintiff within the stipulated period of 30 days, then in such an event the shares of such heirs mentioned in Clause 2 above, who have not come forward as Claimants, shall be distributed amongst the other heirs mentioned in Clause 1 above.

26. In the event of any of the heirs mentioned in Clause 1 above, except those mentioned in Clause 2 above, but including the Claimants who have come forward within the stipulated period of time, expiring before the distribution of the estate or any part thereof, the share of such Deceased heir/Claimant shall be paid by the Petitioner/ Plaintiff to the heirs of such Deceased heir/Claimant.

27. It is agreed and accepted by the parties herein that the other moveable and immoveable properties of the said Deceased which are presently in the custody of Mr. Khushroo Driver and Lohrasp Kalyaniwalla as stated by them in the Notice of Motion No. 139 of 2012 in the above matter shall be handed over to the Petitioner/ Plaintiff, who will liquidate those properties in consultation with the Caveators/ Defendants and shall deposit such liquidated amount in the estate account of the deceased and then shall distribute the same amongst the heirs as per their respective shares as mentioned in clause 1 hereinabove except those mentioned in Clause 2 above.

28. TheBank Account bearing Account No. 6035opened at Zoroastrian Co-operative Bank Ltd., Tardeo Branch in the names of Mr. Lohrasp Kalyaniwalla and Caveator/ Defendant No. 2 herein to be closed and the amounts be transferred to the estate account of the deceased more particularly mentioned in clause 6herein. From the said amount a sum of Rs. 68,888/-, shall be reimbursed to Caveator/ Defendant No. 2 as the said amount is outstanding and due and payable to Caveator/ Defendant No. 2 from the estate of the Deceased.

29. It is agreed and declared by the parties that if any of the heirs does not claim his/her respective share as mentioned in clause 1 hereinabove till the final/last liquidation of the estate of the deceased, in such event the said share of the non-claimant heir shall be again distributed amongst the remaining heirs as per their respective shares as mentioned in clause 1 hereinabove.

30. In view of the above Consent Terms, Notice of Motion No. 47 of 2012 and Notice of Motion No. 56 of 2015 are withdrawn by the parties hereto.

31. Liberty to apply.

32. No order as to costs.

33. Certified copy expedited.

34. Drawn up decree to be dispensed with.

Dated this 16th of December, 2016.

Sd/-
Advocates for the Petitioner

Sd/-
Petitioner

Sd/-
Advocates for the Caveators/
Defendants

Sd/-
Caveator/ Defendant No. 1
Percy Phiroze Bhagwagar

Sd/-
Caveator/ Defendant No. 2
Katy Soonawalla