

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO.67 OF 2015
ALONG WITH
CONTEMPT PETITION NO.1 OF 2012
WITH
NOTICE OF MOTION NO.127 OF 2010
IN
TESTAMENTARY PETITION NO.1048 OF 2009**

Vinod Thakorlal Shah	... Deceased
Narendra Thakorlal Shah	...Applicant
<i>In the matter between</i>	
Rupali Sunil Pandit	... Petitioner
<i>Versus</i>	
Narendra Thakorlal Shah	... Respondent

**Mr. Abhay Pandey, i/b M/s. Abhey Pande & Associates for the
Plaintiff.**

Ms. Sharmila Deshmukh, for the Respondent.

**CORAM: G.S. PATEL, J
DATED: 20th June 2016**

PC:-

1. The application is by the original Respondent for withdrawal of an amount Rs.17,98,300/-. This was deposited pursuant to an order 27th August 2014 (Mrs. R.S. Dalvi,J.) in Contempt Petition No.1 of 2012. This was the amount in a bank account that stood in the name of the deceased and the Applicant. The learned Judge found that there were some withdrawals from that bank account, and therefore directed that these amounts be brought into Court. The Respondent-Applicant has in fact brought this amount to the Court.

2. It is common ground that after it was dismissed, the main Testamentary Petition has been restored to file. Ms. Deshmukh says that at the time of final disposal of the Petition, an order will need to be passed in regard to these amounts and their distribution between those entitled to it. She is undoubtedly correct in that behalf, but that exercise is not in any way assisted by allowing the Respondent to *simpliciter* withdraw this amount today or to transfer it to the bank account from which the funds were brought into this Court. The reason is that the Court earlier noticed unilateral withdrawals from that account. Indeed, it is in the Respondent's interest that the amount remains here, so that there is no controversy in future at the time of disposal of the Petition. Ms. Deshmukh is probably correct in saying that at the final disposal of the Petition, the entitlement or share of the rival parties in respect of this deposited amount will also have to be ascertained by the Court. But that purpose is not better achieved by allowing these funds to go out of this Court. It is sufficient to direct that the parties will be at liberty to raise this point at the time of final disposal of the Petition. All contentions in that behalf are expressly kept open to the time of final disposal of the

Petition. For removal of any doubt, it is clarified that if the amount deposited is found to be part of the estate of the deceased, it will have dealt with accordingly at the time of disposal of the Petition.

3. The Notice of Motion is disposed of in these terms. No costs.

(G. S. PATEL, J.)