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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 99 OF 2010
IN
TESTAMENTARY PETITION NO. 657 OF 2010

Dr. Behram Meherwanji Sethna ...Petitioner
Versus
Silloo Dara Zaiwalla & Another ...Respondents

Mr. V.Y. Sanglikar, *for the Petitioner.*
Ms. Vidya Nair, *i/b M/s. Mulla & Mulla, for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 30th August 2016

PC:-

1. Heard.

2. The Petitioner is the younger brother of the Respondent No. 1 and the brother-in-law of the Respondent No. 2. In this Petition, he seeks removal of the Respondents under Section 301 of the Indian Succession Act, 1925. The Respondents are executors of the Will dated 1st August 1973 and Codicil dated 19th April 1979 left by the mother of the Petitioner and the 1st Respondent, Jalam Meherwanji Sethna. Probate was obtained to these two testamentary writings on 29th September 1984. All three parties jointly sought probate. There is no dispute about this.

3. According to the Petitioner, the Respondents have totally failed to administer the property and the estate. He says that their conduct has been consistently blameworthy and borders on the nefarious. The Respondents' conduct was indeed so egregious, according to the Petitioner, that he was compelled to file Miscellaneous Petition No. 27 of 2004 for directions from the Court. It seems that by an order dated 10th March 2005 of a learned Single Judge in that Miscellaneous Petition, the Prothonotary & Senior Master was directed to examine the inventory and accounts filed by the Respondents. A copy of that very detailed report is annexed.[1]

4. It is not in dispute that this report was placed before a learned Single Judge of this Court on 6th July 2006 (Hon'ble Mr. Justice D.K. Deshmukh, J.)[2] The learned Single Judge considered the Commissioner's Report and found that the Respondents had submitted accounts and inventory substantially till December 2003 when that Miscellaneous Petition was filed. He also found that the Commissioner was satisfied with the inventory. The Petition was disposed on that basis.

5. Dissatisfied, the Petitioner appealed; unsuccesfully. The Division Bench on 27th November 2006 dismissed that Appeal. It *inter alia* found that there was no application before them nor any

1. Petition, Ex "A2", *pp.* 46–64.
2. Affidavit in Reply, Exhibit "2", *pp.* 219–222.

prayer for removal of the Respondents as executors and Section 301 of the Indian Succession Act, 1925 could not be applied. Paragraph 7 of the Appellate Order reads thus:

> "7. The Counsel for the Appellant submitted that not only the accounts were not submitted by the executors in time and nothing was done for about 17 years, but also the accounts and inventory submitted by the executors do not reflect the correct affairs. He invited our attention to Sections 263, 301, 302 and 317 of the Indian Succession Act, 1925 and submitted that the learned Single Judge seriously erred in not taking appropriate action against the executors and in disposing of the petition."

6. I emphasize this because this is substantially the complaint that is made before me today. In fact, this seems to be the entirety of the complaint that is made before me today. The Petitioner still maintains that he has received "nothing". He says that certain office premises are being used by the 2nd Respondent exclusively as his chambers, and, further, that no amount in dividend has been paid to him. In this connection, it is worth noting the contents of paragraphs 12 to 17 of the Petition. Here, we see repeated allegations that the accounts are bogus and that the inventory is false.

> "12. The Petitioner states that as per the last will and testament dated 1st August 1973 and codicil dated 19th April 1979 of which probate was granted on 29th September 1984, the following items of moveable property were required to be distributed to the beneficiaries as per the will:

(a) Amount lying in the Current Account with Bank of India, M.G. Road, Branch;

(b) Amount lying in the Current Account with Union Bank of India, Dalal Street Branch;

(c) Compulsory Deposit (Income Tax Payers Scheme 1974 with Reserve Bank of India);

(d) Amounts kept in two separate Fixed Deposits in Bank of India Wodehouse Road Branch together with the interest accrued thereon since the year 1981;

(e) Amount kept in Fixed Deposit with Godrej Soaps Limited together with interest since 1981;

(f) Amounts kept in Fixed Deposit with Tata Engineering and locomotive Company Limited together with interest since 1981;

(g) Amounts kept in Fixed Deposit with Tata Iron and Steel Copany Limited together with interest since 1981;

(h) Amounts kept in Post Office in National Savings Certificate together with interest since 1981;

(i) 11% Debentures of Mahindra & Mahindra Limited together with interest since 1981;

(j) Sale proceeds of Unit Trust of India together with interest since 1981;

(k) Dividends from various shares since 1981;

(l) Shares of Burma Mines Limited;

(m) Income Tax Refunds; and

(n) Office furniture.

13. The Petitioner states the amounts, interests and dividends pertaining to items (c) to (m) above, the Respondent No. 1 has dishonestly deposited them in an account opened by her in the Bank of Baroda, Cuffe Parade Branch in the joint name of her husband, the Respondent No. 2 herein. The Petitioner was not paid his share bequeathed to the Petitioner under the Will.

14. The Petitioner had written letters, sent notices to the Respondents calling on them to pay the Petitioner his due share and administer the estate. The Respondent Nos. as executors of the will and codicil were in fact duty bound to pay the Petitioner his share. In spite of repeated notices, copies of which are hereto annexed and marked **Ex. "B, B1, B2, B3, B4, B5 & B5, B6, B7, B8"** the Respondents have failed and neglected to pay the Petitioner his due share as per the will and codicil. The Petitioner states that it is necessary to point out that M/s. P.C. Hansotia & Co. were the Joint Accountants for the Petitioner's deceased mother, the Respondent No. 1 and the Petitioner and M/s. Gunderia & Co. are the Petitioner's Accountants.

15. The Petitioner states that in respect of immovable property which is part of the estate viz. "Sethna bldg", the Petitioner has ½ share. Even this building is managed by the Respondents. The Respondent No. 1 did not give any accounts for this building till the Petitioner filed Miscellaneous Petition No. 27 of 2004. Rent is collected in cash or bearer cheque and not being deposited in Union Bank of India's Dalal Street Branch, as required. Tenancy transfers and underhand dealings are rampant for this

property as well. Respondent No. 1 maintains the said A/c with Union Bank in her single name and has refused to convert it into or joint A/c.

16. In respect of the immoveable property consisting of an office admeasuring about 905 sq. ft. (carpet area) in "Bansilal Mansion" Homi Modi Street, Fort, Mumbai, the Petitioner has ¾ share in the tenancy rights and the Respondent No. 1 has only 1/4th share. A substantial area of 700 sq. ft. was let out to Alkati Manufacturers' Association on a leave and license basis in 1963 during father's lifetime. After evicting the said licensee in 1982 the Respondents have deprived the Petitioner his income and are even occupying the entire premises to the total exclusion of the Petitioner, in direct conflict with their duties as Executors & Trustees of the will and codicil. Letters dated 30th April 1981 and 24th February 1982 written by Alkali Manufacturers' Association of India (**Ex. "C" & "C1"** hereto) are eloquent. The Respondent No. 1 insisted that the licence fee should be paid in her name alone and refused to accept the licence fee in joint names. In the letter dated 26th June 2003 the Respondent No. 2 has admitted paying rent and electricity bills in breach of his duty as the executor & trustee of the Will & Codicil. He is in fact using the premises as his office.

17. The Petitioner states that his grievances about **total non-execution of the will and codicil of his late mother have not been looked into. The Respondents submitted bogus accounts and inventory to which the Petitioner objected. A copy of the Prothonotary's Report dated 23rd June 2005** is produced at Exhibit "A1" and the Petitioner's Affidavit dated 23rd February 2005 pointing out discrepancies is hereto annexed and marked **Exhibit "D"** respectively."

7. I do not see how I can re-examine any of this. This is an issue that is no longer *res integra*. It is closed by a decision of the learned Single Judge. That would have been enough for my purposes, because I can most certainly not sit in Appeal over that order nor can the Petitioner force me to do this in the guise of bringing a Petition now under Section 301 of the Indian Succession Act, 1925 for different reliefs though on the same footing. In any case, there is no possibility of going down that road because the order of the Division Bench has sealed the matter completely. There is also, therefore, no question of reversing the findings of the Court appointed Commissioner and which recorded in paragraph 18 of his Report. In any case, I do not know what to make of this scatter-shot listing of anything and everything: "office furniture", for instance, or the various other items that are, clearly, covered by the Prothonotary & Senior Master's report and the two orders on it.

8. I turn now to what is stated in paragraph 20 of the Affidavit in Rejoinder, which reads thus:

> "20. I submit that
>
> (i) Respondents have illegally appropriated to themselves the commercial premises in Bansilal Mansion, Fort, Mumbai which admeasures about 900 sq. ft in prime commercial area;
>
> (ii) the Affidavit-in-reply is silent on how the Respondents can appropriate the said premises to themselves;

> (iii) for all these years I am deprived of my income from Bansilal Mansion premises which by a moderate estimate comes to over Rs. 20 lakhs;
>
> (iv) I am not given my share of dividends / income from Fds, shares, debentures for over 30 years;
>
> (v) bank accounts are opened and operated in the Respondents' own names for the estate without my involvement as executor and bank a/c. with Union Bank of India is operated by the Respondent No. 1 in her sole name;
>
> (vi) one tenancy was transferred in Sethna Building and the transfer premium pocketed by Respondent No. 1.
>
> The Affidavits filed earlier and the present Affidavit in Reply does not even remotely deal with these aspects."

9. Again, this is completely vague. It speaks of the Petitioner being deprived of all share in Bansilal Mansion (Paragraph 20 (i) to 20 (iv)) and having not received any dividend income for 30 years (paragraph 20 (iv)). Paragraphs 20(v) and (vi) are in generalities. This is not what the Commissioner's Report says. This is not what the previous Courts found. As regards the prayer in respect of Bansilal Mansion, an identical prayer on identical averments was made in Miscellaneous Petition No. 27 of 2004. The same allegations were made there and these are to be found in paragraph 8 at page 157 of the Petition. Relief was not granted. As regards sub-paragraphs (v) and (vi) of paragraph 20 of the Rejoinder, these are too vague to admit of reliance for the purposes of Section 301 of the Indian Succession Act, 1925.

10. I am, at this stage, concerned not with the directions for the administration of the estate as such. It is undoubtedly clear that the Respondents must, of course, maintain accounts and administer the estate till that process of administration is complete, if that has already not been done. According to the Respondents, and this is stated in terms in their Affidavit in Reply, the administration is complete. I am not concerned with those disputes and those premises at Bansilal Mansion. I have to examine whether there is a ground made out in this Petition for the removal of executors for misconduct.

11. I find no such ground. On the contrary, it seems to me that it is the Petitioner who insists on re-agitating the same issues over and over again. I note in passing that Mr. Sanglikar sought an adjournment on the ground that before another court a suggestion was made for settlement. I refused that adjournment. That dispute is altogether separate from this one.

12. The Petition is dismissed, and it is dismissed with costs.

(G. S. PATEL, J.)