

ATUL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 4869 OF 2007
IN
SUIT NO. 3505 OF 2007

Meenakshi Shekhar Karkera ...Plaintiff
Versus
Santosh Krishna Puthran & Others ...Defendants

Mr. Karzan Shroff, *with Mr. Avinash Joshi, i/b Mulla & Mulla, for the Plaintiff.*

Mr. Mustafa Doctor, Senior Advocate, *with Mr. Vishal Kanade & Mr. Sandeep Bhimekar, i/b DSR Legal, for Defendant No. 1.*

Ms. Tanmayi Rajyadhyaksha, *i/b Ms. Pallavi A. Kulkarni, for Defendant No. 3.*

Mr. Sandeep Deshmukh, *for Defendant No. 4.*

CORAM: G.S. PATEL, J
DATED: 19th December 2016

PC:-

1. Following the previous order dated 22nd September 2016, the 1st Defendant has filed a substantial Affidavit-cum-Sur Rejoinder dated 4th October 2016. To recap: the 2nd Defendant is the widow of one Krishna Mahalinga Puthran. The 1st Defendant is their son, and the Plaintiff and Defendants Nos. 3 and 4 are their daughters. The Plaintiff is supported by the mother, Defendant No.2 and

Defendant No.4. Defendant No.3 supports her brother, Defendant No.1.

2. By the order of 22nd September 2016, I noticed the previous ad-interim order of 17th January 2008, issuing a wide restraint in respect of various properties in Exhibit B to the plaint, and noting that the property at Sr. No.1, a residential flat, had by then already been disposed of. By my order of 22nd September 2006, I noted the reported status of the properties at Sr No 1, 3, 4, 5 and 6 of Exhibit B to the plaint; and I noted that the real dispute is about the property at Sr No 2. This is a hotel and bar on the Western Express Highway. It used to be called Hotel Dinesh. It is now called Sannidhi Bar & Restaurant. The deceased, Krishna Puthran, used to run it. The 1st Defendant claims he assisted his father, and it was he alone who did so. Noting that there had been certain changes in the required licenses such that some now stand in the name of the 1st Defendant or his wife, I required the 1st Defendant to file an explanatory affidavit. This has now been done, in the form of the Affidavit in Sur-Rejoinder.

3. This Affidavit now places on record very many facts that will, I believe, require evidence. Among these, is the act of the 2nd Defendant, the widow of the deceased Krishna M. Puthran, in surrendering his liquor license for this bar and restaurant, and an explanation for it. For now, the 2nd Defendant claims she did this without knowing or understanding her actions.

4. As against this, and in regard to the license that is in the 1st Defendant's wife's name, Mr. Doctor for the 1st Defendant points out that even before the ad-interim order of 17th January 2008, the 1st Defendant's wife had applied for a licence in her own name, one that came to be processed and granted only later. He also points out that there is a considerable amount of material on record to show that Defendant No. 4, who supports her sister, the Plaintiff (and which is also supported by their mother, the 2nd Defendant), had at an earlier point in time granted her no objection to the transfer of this contentious liquor licence to the 1st Defendant, their brother. This too will require explanation from the 4th Defendant.

5. The reliefs in the Notice of Motion are *inter alia* for an order of disclosure, the appointment of Court Receiver and a restraint against the 1st Defendant from alienating any part of the deceased mother's estate. This is the estate described in Exhibit "B" to the plaint, at page 20. As I have noted, on 22nd September 2016, I noticed the status of the properties other than the hotel at Sr No. 2, the remaining property in dispute.

6. The 1st Defendant states that this is, at least so far, a running and operational bar and hotel with all valid and subsisting licenses. The question of the other properties having been sufficiently addressed, in my view, the Plaintiff's interest and those of the 2nd Defendant are sufficiently protected upon the 1st Defendant being required to maintain and renew the necessary licences periodically and on his undertaking, as Mr. Doctor on instructions does, not to surrender these licences without leave of the Court obtained after at least three weeks' prior notice to the Advocates for the Plaintiff and

other Defendants. Further the 1st Defendant will also maintain accounts of the business being conducted, and which he is required to do in any case in the ordinary course of business. Further protection is, therefore, not required at this stage. Mr. Doctor also readily agrees to furnish copies of the annual audited accounts to the Plaintiff through their Advocates. These are at present not required to be filed in Court but will be kept separately for being produced in evidence, when necessary.

7. The Notice of Motion is disposed of in these terms. All rights and contentions are expressly kept open to the final hearing of the Suit.

(G. S. PATEL, J.)