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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
MISCELLANEOUS APPLICATION NO. 1 OF 2016  
IN  
TESTAMENTARY SUIT NO. 40 OF 1992  
IN  
TESTAMENTARY PETITION NO. 53 OF 1992**

|                                 |               |
|---------------------------------|---------------|
| Arun Nandlal Bhatt & Others     | ...Applicants |
| <i>And</i>                      |               |
| Chandravadan T. Desai & Another | ...Plaintiffs |
| <i>Versus</i>                   |               |
| Arun Nandlal Bhatt and 6 others | ...Defendants |

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**Mr. Cyrus Ardeshir**, *i/b Mr. Bharat Punekar, for the Applicants.*  
**Mr. Navin Vimadalal**, *i/b M/s. Vimadalal & Co., in support of legal heirs of original Respondent No. 2.*

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**CORAM: G.S. PATEL, J**  
**DATED: 18th April 2016**

**PC:-**

1. I have heard Mr. Ardeshir for the Applicants. The relief that Mr. Ardeshi is perhaps extreme. It is certainly unusual. However, having regard to the circumstances, I believe the application should be allowed. The Applicants seek the removal of the original Probate Petitioner, a person of 92 years of age, presently living in Bangalore, as an Executor. The circumstances are indeed peculiar.

2. One Rasilaben Gokli, also known as Rasila Nandlal Bhatt, had four sons Rajanikant, Arun, Ashok and Chandrakant. She also had a daughter. The daughter passed away in 1972. Arun and Chandrakant have subsequently passed away as well. Rasilaben was, in her lifetime, entitled to some leasehold rights to a plot of land at Juhu Scheme bearing CTS No. 283 of Village Vile Parle, admeasuring 663.03 sq. mtrs. The term of the lease was 998 years.

3. On 16th January 1991 Rasilaben made a Will. She appointed her brother Mr. Hemant Desai and one Chandravadan Desai, the original Petitioners, as her Executors. As regards the property at Juhu, she bequeathed this to only two of her four sons, viz., Ashok and Chandrakant (both of whom have since died).

4. Rasilaben herself died on 31st May 1991 at the age of 67.

5. On 26th December 1991, the Executors of her will, viz., Chandravadan Desai and Hemant Desai filed this Testamentary Petition No. 53 of 1992 seeking probate to her Will. Of necessity, the Probate Petition mentions that the Will of which probate was sought was the one dated 16th January 1991. The probate Petition was opposed by Arun and Rajanikant, the two sons who had been excluded from the bequest of the Juhu property. Incidentally, I may note that Rajanikant himself has recently passed away and a separate Petition for probate to his Will is even now pending.

6. Upon Caveats being filed by Arun and Rajanikant, the probate Petition was converted in Testamentary Suit No. 40 of 1992. In the meantime, on 19th June 1992 Arun filed Suit No. 1809

of 1992 in this Court seeking administration of the Rasilaben's estate.

7. While these Suits were pending, Chandrakant passed away on 23rd August 2007. Ashok died on 26th June 2009. Both died intestate. These were the two legatees of the Juhu property.

8. On 5th July 2013 one of the co-executors and one of the original Petitioners, Hemant Desai, also passed away. This left only Chandravadan Desai as the sole surviving Executor and Petitioner.

9. The original Probate Petition was filed in 1991. On 24th March 2013, some 23 years after the petition was originally filed, a settlement was finally arrived at putting an end to the entire litigation. Consent Terms were filed. It was agreed that Arun, Rajanikant and the son of Rasilaben's predeceased daughter should receive a certain percentage of the net sale proceeds of the Juhu property. In the Administration Suit, the probate Petitioner Chandravadan Desai was Defendant No. 13.

10. The Consent Terms contemplated that he, in his capacity as an Executor under Rasilaben's Will, would sell the property within six months from the date of the Consent Terms and distribute the sale proceeds amongst the Applicants. On 24th March 2014, these Consent Terms were taken on record. The probate Petition (then a contested Suit) and the Administration Suit were both disposed of.

11. Under the Consent Terms, the present Petitioner/Executor would have had to sell that property at Juhu by September 2014.

Those six months came and went. The property was never actually put to sale.

12. On 10th December 2014, Chandravadan Desai, the Petitioner, wrote to the Applicants confirming that he would administer the estate in accordance with Rasilaben's Will of 16th January 1991, as modified by the Consent Terms to which I have just referred, and further that he would make a distribution of the net sale proceeds in accordance with these Consent Terms. At best, this would have operated to extend the time for completion of sale and distribution of the sale proceeds. A copy of this letter is at page 54 to the Petition.

13. On 27th July 2015 probate of Rasilaben's Will came to be actually issued. That probate contained, as it necessarily had to do, an undertaking from the Petitioner to administer the estate of the deceased and to make a full and true inventory of the property and credits of the deceased.

14. Several months elapsed and yet the Petitioner made no attempt to sell the property. In the meantime, given the location and size of the property offers were received. To arrange the modalities of the assignment, a meeting was fixed at Mumbai. The Petitioner was then in Mumbai. He did not attend the meeting. He left Mumbai for Bangalore but did not indicate when he would return. Between September and October 2015, the Applicants tried to contact the Petitioner. They could not. On 10th October 2015, Applicant Nos. 4, 5 and 7 (all heirs of one or the other of the original Caveators) personally travelled to Bangalore to meet the

Petitioner and to find out when he would return to Mumbai to complete the transaction. Left with no choice on 7th November 2015, the Applicants executed a Term Sheet in favour of the offeror. It is clear that they did not want the existing offer to lapse. That very day, they sent a copy of the Term Sheet to the Petitioner requesting him to come to Mumbai to conclude the transaction.

15. Between early November 2015 and early December 2015, the Petitioner remained illusive. He did not respond to various attempts of communications. A second letter was sent to him on 2nd December 2015. There was yet no reply.

16. Mr. Ardeshir points out that Exhibits “AA” and “BB” to the present Petition at pages 115-119 are extraordinary documents. Exhibit “AA” is a handwritten letter from the Petitioner. It was apparently sent to the Applicants or some of them. Exhibit “BB” is a typed copy. For all practical purposes, the two exhibits are one. What is stated in this document is indeed shocking. In this, for the first time the Petitioner, an Executor, assails Rasilaben’s Will of 16th January 1991. He says that it is a forgery by Chandrakant, Neelima, and even the co-executor Hemant Desai, among others. He says that there is another Will dated 24th October 1986, and that this is the genuine Will. He also says that nothing further should be done and all lockers should remain as they are and says, completely contrary to the Consent Terms, and which he separately confirmed he would adhere to, that none of the Applicants should get any shares from Rasilaben’s estate.

17. It is on this basis and for this reason that the Applicants seek the Petitioners' removal. That, however, is the alternative prayer. In fairness, the first prayer is for a direction to the Petitioner to abide by the Consent Terms and to execute the necessary documents of sale of the Juhu property.

18. Mr. Ardeshir's clients have attempted to give notice of the present application to the Petitioner. All that is received in return is a letter or email from one Mr. Harish V.R., Advocate in Bangalore demanding that the Petitioner be sent a return air ticket, that accommodation be arranged for him preferably near Radio Club and that the matter be kept in the second week of June 2016.

19. This was pointed out to me on the last occasion when Mr. Ardeshir moved for reliefs. I then directed that notice be given afresh. This is noted in my order of 5th April 2016. A notice was given. Pursuant to that, the Plaintiffs' Advocates have received an email from Mr. Harish V.R., repeating the same demand.

20. Leaving aside for the moment all other allegations, there are only two documents immediate relevance. The first is the document at page 54, the Petitioner's own letter of 10th December 2015 agreeing to abide by the Will dated 16th January 1991 and to administer the estate in accordance with that Will as modified by the Consent Terms. The second is the document at Exhibit "AA" with its translation at Exhibit "BB" to which I have just referred. I am wholly unable to understand how the Petitioner can possibly contest this application or what he can possibly have to say. His bounden duty in law as an Executor was to obtain a probate to the

Will. It was not for him to allege that the very Will that appoints him as Executor is a forgery. He had no locus or standing to say anything of the kind. He could have renounced executorship, and that is all. It seems to me clear that even on any principle analogous to *devastavit*, well-established under the Succession Act, the actions of this Executor are likely to result in considerable loss to the estate and to those entitled to a share in it.

21. I see no reason whatsoever to indulge this Petitioner if these are the sort of communications he persists in sending. I thought that it would be evident to the Petitioner as also to his Advocate that what I said in my order of 5th April 2016 was not in any sense a request or an invitation to the Petitioner. He was required to make arrangements to either remain present or be represented in Court today. He has done neither.

22. Ordinarily, our Courts do make some allowance for the age of a litigant and ordinarily I would have granted some leniency to the Petitioner. But I believe that I have already done that in my order dated 5th April 2016. What I am not prepared to do is to allow this estate to be put to loss and to let a valuable offer be withdrawn because of this inexplicable and legally wholly untenable conduct of the Petitioner. It strains incredulity that an Executor acting as a probate Petitioner should imagine himself to have any standing at all to challenge and dispute the very Will that appoints him an Executor. I do not imagine the month of the year is going to make the slightest difference. I do not see what the Petitioner can say in June 2016 that he cannot in April 2016. I fail to understand how the Petitioner can resile from his position solemnly taken. I cannot

overlook the fact that he is the Petitioner; he has put his signature to this Petition. In this Petition he propounds the Will of 16th January 1991. Accompanying the Petition is an executor's oath. He has confirmed in his writing at page 54 to administer the estate in accordance with the Will, and he has in that very document, confirmed that he will act according to the Consent Terms. He is not a legatee. He is not a beneficiary. He is not an heir. He has no standing in law to dispute or challenge the Will. Even if one of the heirs had brought a Petition for Letters of Administration With Will Annexed, this probate petitioner could never have contested it.

23. In this view of the matter, I believe that more than sufficient case has been made out for the grant of final relief on this Miscellaneous Application. I am not inclined to grant prayer clause (a), which is a direction to the Petitioner to execute the necessary documents. I have absolutely no confidence that the Petitioner will comply with these directions.

24. This is a fit case for the removal of the Petitioner.

25. Accordingly, the Miscellaneous Application is made absolute in terms of prayer clause (b), which reads as follows:

“(b) In the alternative, if this Hon’ble Court finds that the prayer as sought for in prayer clause (a) cannot or ought not to be granted, that this Hon’ble Court be pleased to pass an Order removing the Petitioner as the Executor of the Will dated 16th January 1991 and permit the Applicants to sell the said property and distribute the proceeds

thereof in accordance with the consent terms dated 24th March 2014 and appoint Respondent No. 5 and 7, or such other person as this Hon'ble Court may deem fit and proper to administer the remaining estate as successor to the Petitioner as the Executor / Administrator of the Will dated 16th January 1991;"

**26.** This order necessarily means that the Petition and the ensuing grant will need to be amended to reflect Respondents Nos. 5 and 7 as Petitioners; and to show the Petition as one for Letters of Administration with Will annexed. Leave to amend granted. The necessary amendments, including to the grant, are to be carried out on or before 29th April 2016.

**27.** All concerned to act on an authenticated copy of this order.

**(G. S. PATEL, J.)**