IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

NOTICE OF MOTION NO.14 OF 2017
along with
TESTAMENTARY SUIT NO.204 OF 2016
in
TESTAMENTARY PETITION NO.345 OF 2016

Jasmin Kirit Mehta
Nee Jasmin Ambashankar Joshi .. Applicant/Plaintiff
Vs.
Anil Ambashankar Joshi & Anr. .. Defendants/Caveators

Mr.Vivek Kantawala a/w Mr.Amey Patil i/by Ms.Bhairavi Waravdekar for the applicant/plaintiff.
Ms.Neha Bhide i/by Ms.Gauri Deshpande for the defendants/caveators.

CORAM : R.D. DHANUKA, J.
DATE : 11th July 2017

P.C. :

. By this notice of motion, the applicant (original petitioner) who claims to be the executrix of the alleged Will and Testament of the deceased Ambashankar Nanji Joshi, who died on 20th January 2014, seeks permission to operate the saving bank account described in prayer clause (a) of the notice of motion.

2. Mr.Kantawala, learned counsel appearing for the applicant invited my attention to some of the averments made in the affidavit-in-support of the notice of motion and submits that the said bank account is the joint account of the deceased father with the applicant. In view of the objection raised by the caveators, Central Bank of India, Byculla (East) Branch, Mumbai - 27 is not allowing the applicant to operate the saving bank account described in prayer clause (a). He submits that the

applicant has deposited a rental income described in paragraph 4 of the affidavit-in-support of the notice of motion in the said bank account and was utilising the amounts for discharging all the liabilities arising in respect of the estate of the deceased. He submits that the rental income has been accumulated for past two years on the said property which is required to be deposited in the said bank account and out of which various statutory liabilities are required to be discharged by operating the said bank account. He submits that the applicant has been paying off all the liabilities of the estate of the deceased with his own expenses for last 2 ½ years. He submits that in these circumstances, the applicant be permitted to operate the said saving bank account of the deceased.

3. Ms.Bhide, the learned counsel appearing for the caveators opposes this notice of motion on the ground that the applicant has not furnished any account of the estate of the deceased father. She submits that the applicant has not made any payment of rent in respect of Shop No.2, Sitabai Niwas, 228, Dr.Ambedkar Road. She submits that in view of the non-payment of the rent by the applicant, who claims to be the executrix of the alleged Will and Testament of the deceased, the landlord has issued a notice of eviction in respect of the said property. It is submitted by the learned counsel that if this Court permits the applicant to operate the said bank account, the applicant be directed to furnish the accounts including the copy of the passbook.

4. I have heard the learned counsel for both the parties. The applicant has been receiving certain rental income from the property of the deceased and seeks permission to deposit the said amount in the said

bank account which was operated by the applicant as a joint holder with the deceased. The statutory liabilities in respect of the properties of the deceased are required to be discharged from the payment that would be deposited in the said account. In these circumstances, in my view, the applicant deserves to be permitted to operate the Saving Bank Account No.3023994288 with the Central Bank of India, Byculla (East) Branch, Mumbai – 27. At the same time, the applicant is also required to clear the statutory liabilities of the deceased in respect of various properties out of the said bank account.

5. Mr.Kantawala, learned counsel for the applicant, on instructions, has agreed to furnish the accounts of the deceased from the date of his death i.e. 20th January 2014 till date to the caveators within six weeks from today without fail. Statement is accepted. Applicant shall comply with the said statement.

6. The applicant is permitted to deposit the amount including the rental income from the property which belonged to the deceased father in the said account. The applicant shall discharge the statutory liabilities out of the said amount by operating the said account. Periodical account shall be submitted by the applicant every quarter to the caveator within 15 days from the date of expiry of each quarter. The applicant is also directed to pay arrears of rent in respect of the properties described in the alleged Will. If any arrears is brought by the caveators to the notice of the applicant, the same shall be paid within two weeks from the date of receipt of such notice. The Central Bank of India, Byculla is directed to allow the applicant to operate the said Saving Bank Account

No.3023994288 which stands in the name of the deceased on receipt of an authenticated copy of this order. The said bank shall also furnish copies of the statements of said account from the date of death of the deceased i.e. 20th January 2014 till date and in future. Such copies of the bank statements shall be furnished within two weeks from the date of communication of this order.

7. Notice of motion is disposed of in aforesaid terms. No order as to costs. Parties as well as the Central Bank of India, Byculla to act on the authenticated copy of this order.

8. Considering the facts of this case, it would be appropriate if the parties sit across the table and settle the dispute amicably.

9. Place the testamentary suit on board for 'Directions' after four weeks to consider the progress in the matter.

R.D. DHANUKA, J.