

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

**NOTICE OF MOTION NO.65 OF 2015
in
TESTAMENTARY PETITION NO.377 OF 2010**

Alka Ramesh Sharma
@ Alka Vithalrao Hande .. Applicant/Org.Caveator

In the matter between
Sampat Pandurang Khelukar .. Petitioner
Vs.

Alka Ramesh Sharma
@ Alka Vithalrao Hande & Ors. .. Respondents

Mr.Y.K. Tiwari a/w Mr.Asutosh Shukla for the applicant/org.caveator.
Mr.Shishir Joshi i/by Ms.Priti Joshi for the original petitioner.
Mr. Mayur Khandeparkar a/w Ms.Prerna Lalchandani a/w Ms.Jaswandi
Khatu i/by Ms.Reena Salunkhe for the respondent no.3.

**CORAM : R.D. DHANUKA, J.
DATE : 7th June 2017**

P.C. :

. The applicant who is the original caveator seeks appointment of the petitioner in respect of estate of the deceased for the protection and preservation of the estate of the deceased and the income generated from the same and for various other reliefs against the executors who were alleged to have been appointed by the testator in the alleged Will dated 29th August 2006. The testator died on 16th December 2009.

2. Mr.Tiwari, learned counsel appearing for the applicant invited my attention to the certificate of practice issued by the Government of India to the Notary Public Mr.Durgadas Ramayya Kudrigi dated 26th March 2008 authorising him to the practice as Notary Public

for a period of five years from the date of the said certificate. He submits that the said Notary Public could not have notarised the alleged Will on 30th August 2006 i.e. prior to the date of his appointment as Notary Public by Government of India. He also made an attempt to point out various other defects in the alleged Will.

3. The next submission of the learned counsel for the applicant is that the executors have not furnished any account of the estate to the applicant and has given Worli flat on leave and license basis to a third party. He has also not disclosed as to whether the properties forming part of the estate of the deceased are maintained properly or not. The income generated out of the said properties are not disclosed. He submits that the executors have not maintained account of the estate in view of the fact that the properties forming part of the estate of the deceased are in possession of the sisters of the applicant. He submits that in this situation, the relief as prayed in the notice of motion be granted in favour of the applicant.

4. Mr.Joshi, learned counsel appearing for the executors, on the other hand, submits that the alleged dispute in respect of the alleged execution of the Will cannot be gone into by this Court at this stage in this notice of motion. The said issue can be decided by this Court at the stage of final hearing after oral and documentary evidence are led.

5. In so far as the other allegations made by the applicant in the affidavit in support of the notice of motion about maintenance of the account of the properties is concerned, the learned counsel invited my

attention to some of the statements made by his clients in the affidavit-in-reply filed by his clients on 4th April 2017.

6. It is submitted by the learned counsel that in so far as the Worli flat is concerned, the said flat had been given on leave and license basis by the deceased testator prior to his death to a third party. He submits that with effect from 2nd January 2017, the said Worli flat has been given on leave and license basis in favour of the another licensee and the said license is in force. It is submitted that in so far as the compensation received from the said licensee is concerned, the said amount is regularly deposited in the accounts of the executors by his clients and they have not withdrawn any amount except for the payment of maintenance charges payable to the society and commission payable to the estate agent for renewal of leave and license agreement. He submits that the executors undertake not to withdraw any amount from the said account of the deceased testator without leave of the Court.

7. In so far as the rent received from undivided share of the deceased in Nashik Hotel is concerned, the said amount is deposited in the hotel account and is not withdrawn by the executors or any other legal heirs. Learned counsel for the executors submits that the said amount will not be withdrawn by the executors or will not be allowed to be withdrawn by any other legal heirs without leave of the Court.

8. In so far as the flat at Nashik is concerned, it is submitted by the learned counsel that the said flat is in custody of the executors. He submits that since the executors are not able to fetch any income by giving the said flat on leave and license basis, the said flat is lying locked.

9. In so far as the bank account of the deceased testator is concerned, it is submitted by the learned counsel for the executors that the executors has not operated such bank account till date and they will not operate it without leave of the Court.

10. Learned counsel for the executors also invited my attention to the order dated 3rd September 2014 passed by the Division bench of this Court in Appeal (L) No.616 of 2012 which was filed by the applicant herein arising out of the testamentary proceedings in respect of the alleged Will left by the deceased mother of the applicant. He submits that the similar reliefs as prayed in this notice of motion were also prayed in the Notice of Motion No. 95 of 2011 filed by the applicant herein which were refused by the learned Single Judge. He submits that the Division bench of this Court has also not granted any relief as prayed by providing certain safeguards in respect of the estate of the deceased mother. He submits that no separate suit is filed by the applicant in so far as the estate of the deceased father is concerned.

11. Mr.Khandeparkar, learned counsel appearing for the defendant no.3 submits that this Court cannot go into the alleged defects or irregularities in preparation of the Will of the estate of the deceased testator at this stage. He submits that the executors have not acted against the interest of the estate of the deceased or the beneficiaries. He submits that under the said Will, all grand children including the children of the applicant are granted certain bequest. He submits that in so far as his client is concerned, she has no grievance of any nature whatsoever against the executors at this stage.

12. A perusal of the affidavit-in-support of the notice of motion indicates that there are no serious allegation of any nature whatsoever against the executors made by the applicant in the said affidavit.

13. In so far as the submission made by the learned counsel for the applicant alleging certain discrepancies in the execution of the Will or creating doubt about the execution of the Will is concerned, it is not necessary for this Court to go into this issue at this stage, those allegations will have to be considered at the stage of final hearing after the parties leading oral as well as documentary evidence.

14. In so far as the case of the applicant that the executors have not maintained the properties of the deceased testator, account in respect of the estate of the deceased are not furnished and about the leave and license created by the executors is concerned, a perusal of the affidavit-in-reply filed by the executors clearly indicates that in so far as the Worli flat is concerned, the said flat was already given on leave and license basis by the deceased testator prior to his death which leave and license has been continued by the executors in favour of a licensee. The executors have now given the Worli flat on the leave and license basis under a leave and license agreement duly registered.

15. Learned counsel for the executors have already rendered an undertaking before this Court during the course of the arguments that the rent received from the said licensee which is deposited in the account of the executors has not been withdrawn by the executors except for the purpose of payment of maintenance charges payable to the society

and commission payable to the estate agent for renewal of the leave and license agreement and would not withdraw any amount from the said account by the executors without leave of the Court.

16. Learned counsel for the executors submits that the executors have also rendered an undertaking before this Court that the rent received from undivided share of the deceased in Nashik Hotel is also deposited in the hotel account and has not been withdrawn by the executors or any other legal heirs and would not be withdrawn any amount in the said hotel account without leave of the Court.

17. In so far as the flat at Nashik is concerned, it is the case of the executors that no income can be generated from the said flat as on today in view of there being no licensee is available, the said flat is lying locked and is in custody of the executors.

18. In so far as the submission of the learned counsel for the executors that bank accounts of the deceased testator are not operated by the executors and no amount has been withdrawn by the executors is concerned, the executors have also rendered an undertaking before this Court that no amount would be withdrawn without leave of the Court in the said bank accounts. All undertakings rendered by the learned counsel for the executors recorded aforesaid are accepted by this Court.

19. In so far as the accounts of the estate of the deceased testator are concerned, learned counsel for the executors states that the accounts are properly maintained from the date of death of the deceased testator

and would submit such accounts before this Court within four weeks from today. His clients also would file a copy of the leave and license agreement entered into with the new licensee duly certified as true copy by the advocate on record with the Prothonotary and Senior within four weeks from today. He also agrees to furnish details of the account maintained by the executors in which rent received from the licensee in respect of the Worli flat is deposited.

20. In so far as the flat at Nashik is concerned, the executors are directed to make an attempt to give the said flat on leave and license basis at the earliest. The applicant is also at liberty to bring a licensee for the purpose of giving the said flat on leave and license basis. If any such licensee is introduced by the applicant in respect of the Nashik flat with reasonable terms, the executors shall consider the same.

21. In these circumstances, I am of the view that the estate of the deceased testator is fully protected and no interest of any party would be prejudiced including the applicant. The defendant no.3 has no allegation of any nature whatsoever against the executors as on today. In my view, the interest of justice would be met with if the applicant is permitted to obtain photocopies of the accounts and of leave and license agreement which would be submitted by the executors. The Prothonotary and Senior Master to furnish copies of such documents to the applicant on payment of photocopying charges, if any.

22. It is made clear that the executors are permitted to make payment of the charges of the society, outgoing, taxes levied in respect of

the Worli flat and also, if any, payable in respect of the other properties forming part of the estate out of the income generated by the executors in respect of the executors' properties.

23. Notice of motion is disposed of in the aforesaid terms. No order as to costs.

R.D. DHANUKA, J.