

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.38 OF 2016**

in

TESTAMENTARY SUIT NO.30 OF 2015

in

TESTAMENTARY PETITION NO.134 OF 2014

Dhiren Kanaiyalal Bhansali ... Applicant

IN THE MATTER BETWEEN

Dhiren Kanaiyalal Bhansali ... Plaintiff

vs

Sagumna Milan Mehta & ors .. Defendants

Mr.Veeraj Kandpile I,b Vyas & Bhalwal for Plaintiff

Ms.Kavita S.Lalwani for Defendant no.1

CORAM: K.R.SHRIRAM, J

DATE: 8 FEBRUARY 2017

P.C.

1. This Notice of motion is taken out for withdrawing an amount of Rs.22,56,752/- that was deposited by the defendants.

2. The Plaintiff and the Caveator are the children of one Kanhaiyalal Bhansali. Kanhailal Bhsansali (the deceased) was an Insurance agent. He was to be paid a sum of Rs.22,56,752/- as commission by the Life Insurance Corporation of India. The Defendant was a nominee in the records of the Life Insurance Corporation of India. In view thereof, the Life Insurance Corporation of India paid the said amount to the Defendants. In

compliance with order dated 4 March 2015 the Defendants deposited the said amount with the Prothonotary and Senior Master, High Court, Bombay which has been invested with a nationalized bank.

3. The probate is yet to be granted being the will propounded by the plaintiff. In the meanwhile, this Notice of motion has been taken out and the reason the plaintiff seeks payment of this amount is because pleadings are complete and the Petition be taken up for early hearing and therefore, in the interest of justice, the Plaintiff should be allowed to withdraw this amount.

4. I find the request made to be totally absurd. I am not inclined to grant the reliefs unless the Will is probated. The Plaintiff cannot claim entitlement to this amount claiming to be the sole beneficiary.

5. Notice of motion is therefore dismissed.

6. Suit be listed for issues on **28 February 2017**. In the meanwhile, parties to file their respective Affidavit of documents, complete discovery and inspection and also exchange admission and denial with reasons for denial.

