IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

NOTICE OF MOTION NO.54 OF 2017
IN
TESTAMENTARY SUIT NO.135 OF 2016
IN
TESTAMENTARY PETITION NO.660 OF 2014

Darius Rutton Kavasmaneck ...Applicant/Plaintiff
vs
Maharukh M. Oomrigar & Ors. ....Defendants
And
Gharda Chemicals Limited ....Respondent

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Mr. Mayur Khandeparkar, i/b. Nigel Quraisy, for the Applicant/Plaintiff.

Ms. Appoorva Gupta, i/b. Mustafa Motiwala, for Defendant No.1.

Ms. Asmita Sarangdhar, a/w. Ms. Seema Navale, for Defendant No.2.

Mr. Utkarsh Srivastava, i/b. Vashi & Vashi, for Defendant No.3.

Mr. Ashish Kamat, a/w. Mr. Chirag Dave, i/b. Legasis Partners, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 30 OCTOBER, 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Notice of Motion seeks a protective order in respect of the property of the deceased, whose will is sought to be probated in the present Testamentary Suit.

3. The present Testamentary Suit is filed by the son of the deceased Jer Rutton Kavasmaneck, who left behind a will. The Plaintiff is the sole beneficiary and executor under the will. Since the probate petition is contested by three caveators, it is converted into a Testamentary Suit. There is no dispute between the parties that amongst other properties, the deceased Jer Rutton Kavasmaneck held 2961 equity shares issued by the Respondent, Gharda Chemicals Ltd. These shares admittedly form part of the estate of deceased. It is the case of the Plaintiff that the Respondent has declared dividend for the years ended 31 March 2014, 2015 and 2016 in respect of these shares. The dividend aggregates to about Rs.2.5 crores. This dividend is unpaid and retained in an unpaid dividend account maintained by the Respondent. Since the dispute in the present suit inter alia concerns the right to claim this dividend, the Respondent has not paid the accrued dividend and has retained the same in the unpaid dividend account. By the present Notice of Motion, the Plaintiff seeks a direction for deposit of the unpaid dividend in Court and its investment. The relief is claimed by way of protection and preservation of the estate of the deceased.

4. The application is opposed by the Respondent mainly on three grounds. Firstly, it is submitted that the Probate Court not being concerned with the property of the deceased, but only with the genuineness of the will, no protective relief can be granted in respect of the property by way of injunction or otherwise by the Probate Court. Secondly, it is submitted that the Companies Act, 2013 makes a special provision for declaration of dividend and maintenance and deposit of unpaid dividend in an unpaid dividend account, respectively, under

Sections 123 and 124 of the Act. Learned Counsel submits that no dividend can be paid by a company in respect of any share except to the registered shareholder or to his order, and that if there is no registered shareholder to whom the dividend can be paid, the company is required to transfer the entire amount of unpaid dividend to a special account to be opened by the company as an unpaid dividend account. Thirdly, it is submitted that directions for protection of the property cannot be passed against a third party.

5. The deceased was a Parsi. Section 269(1) of the Indian Succession Act entitles the Probate Court to pass any protective order in respect of the property of the deceased. It is only in a case where the deceased belongs to any of the categories mentioned in sub-section (2) of Section 269 of this Act that this power is not available to the Probate Court. There is no reason why in the present case, when the deceased is a Parsi, the provisions of sub-section (1) of Section 269 cannot be applied for protection of the property of the deceased. Learned Counsel for the Respondent relies on a Division Bench judgment of this Court in **Ramchandra Ganpatrao Hande vs. Vithalrao Hande**[1], where our Court has held that no general power to grant interlocutory relief can be read into the provisions of Section 266 and 268 of the Indian Succession Act in view of the specific provisions contained in sub-section (2) of Section 269 excluding the exercise of power under sub-section (1) of Section 269 in case the deceased belongs to one of the categories specified in Sub-section (2). This judgment, rendered in the context of a Hindu deceased, has no application to the facts of the present case. In the present case,

1 [2011 (4) Mh.L.J. 50

considering that the deceased does not belong to any of the categories specified in sub-section (2), the Probate Court can grant relief under sub-section (1) of Section 269.

6. Insofar as the provisions of Sections 123 and 124 of the Companies Act 2014 are concerned, the dividend in the present case is being ordered to be paid into the Court and invested. This dividend admittedly forms part of the estate of the deceased and deserves to be invested in an interest bearing instrument for the benefit of the successful party.

7. As for the permissibility of the directions to a third party whilst exercising powers under sub-section (1) of Section 269, it is important to note that the directions sought here are not in a contested case concerning the estate of the deceased as between the parties to the present petition and third party Respondent herein. The third party Respondent is admittedly holding property, which forms part of the estate of the deceased. Any protective order passed in this behalf would necessarily require the third party Respondent to abide by the same.

8. There is, accordingly, no merit in any of the objections. Besides, it is also to be noted that it is the Respondent's own case that it has no objection to deposit the amount in this Court in case any suitable order is passed by the Court.

9. In the premises, the Notice of Motion is made absolute. The Respondent is directed to deposit amount of Rs.2,51,68,500, being the

aggregate dividend till date, together with further dividend, if any, with the Prothonotary and Senior Master of this Court within a period of three weeks from today. The amount deposited by the Respondent shall be invested by the Prothonotary in fixed deposit/s of a nationalized bank initially for a period of one year and renewable thereafter from time to time and to abide by the orders as may be passed in the present suit.

(S.C. GUPTE, J.)