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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.692 OF 2017

IN

SUIT NO.2435 OF 2005

Indu Parmanand Patel And Anr.

...Plaintiffs

vs

Sudha Chowgule And Ors.

...Defendants

.....

Mr. J.P. Sen, Senior Advocate, a/w. Mr. Meit Sampat and Ms. Radhika Shah, i/b. Little & Co., for Plaintiff No.1.

Mr. Ashish Kamat, a/w. Mr. Varun Satiya and Ms. Shivaneer Srivastava, i/b. M/s. Crawford Bayley & Co., for Defendant No.1.

Ms. Sonia Putta, i/b. Solomon & Co., for Court appointed administrator.

Mr. V.S. Panandikar, Assistant/Representative of Court Receiver, High Court, Bombay.

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CORAM : S.C. GUPTE, J.

DATED : 21 NOVEMBER 2017

P.C. :

. Heard learned Counsel for the parties. This Notice of Motion is taken out in a suit, which challenges a gift letter and will executed by the husband of the Applicant (Original Plaintiff), since deceased. There is a companion Testamentary Suit seeking probate of the will filed by Defendant No.1 herein. A major part of the estate of the deceased is his 85% shareholding in Tulsidas V. Patel Pvt. Ltd., who is Defendant No.4 in the present suit. The balance 15% shareholding of the company is held by Applicant Nos.1 and 2 and Defendant No.1 herein, each of them holding

5% of the shareholding. As part of an interim order, this Court has appointed an administrator of not only 85% shareholding of the deceased, but of the entire assets of Defendant No.4 Company. The Administrator is currently managing the assets. The present Notice of Motion is on the footing that by a board resolution, Defendant No.4 Company has issued duplicate share certificates in respect of 5% shareholding of Applicant No.1, which duplicate share certificates have been retained by Defendant No.1. The Applicant seeks custody of these duplicate share certificates without prejudice to her challenge to the purported board meeting, in which these duplicate share certificates were issued. Alternatively, the Applicant seeks deposit of these share certificates with the Administrator for cancellation with directions to the Administrator to issue duplicate certificates to the Applicant. Further alternatively, the Applicant seeks appointment of a private receiver of her 5% shareholding in Defendant No.4 Company. The Applicant submits that pending the hearing and final disposal of the suit, Defendant No.1 ought not to be allowed to deal with her (the Applicant's) shares and, on the other hand, the Applicant ought to have liberty to deal with her shareholding in the manner she chooses.

2. At the very outset, 5% shareholding of the Applicant in Defendant No.4 Company is not directly the subject matter of the present suit. At the same time, since the Administrator appointed in the present suit is placed in charge of all the assets of Defendant No.4 and not just 85% shareholding of the deceased, it is necessary that appropriate directions are passed towards protecting 5% shareholding of the Applicant.

3. Learned Counsel for Defendant No.1 submits that his client does not propose to deal with 5% shareholding of the Applicant in Defendant No.4 Company. Learned Counsel submits that in view of his

statement, no further relief may be necessary in the facts of the case.

4. Whilst it is true that the apprehensions regarding unauthorised dealing, if any, with respect to 5% shareholding of the Applicant are addressed in view of the statement made by learned Counsel for Defendant No.1, it also needs to be clarified that as of now, by virtue of the orders passed in this suit from time to time, including the appointment of the Administrator or even otherwise, there is no restriction on Applicant No.1 for dealing with her 5% shareholding in Defendant No.4 Company.

5. In view of the statement of learned Counsel for Defendant No.1 recorded as above, and also the clarification made by this Court, noted as above, no further relief is necessary to be granted on the present Notice of Motion. The Notice of Motion is disposed of by accepting the statement of learned Counsel for Defendant No.1 and the clarification made as above. The statement made, as also the clarification issued by the Court, is in lieu of an interim order and without prejudice to the rights and contentions of the parties on the merits of the suit.

(S.C. GUPTE, J.)