

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

NOTICE OF MOTION NO.104 OF 2017
IN
TESTAMENTARY SUIT NO.124 OF 2015
(TESTAMENTARY PETITION NO.278 OF 2015)

Bharti Rajnikant Shah	...	Applicant
In the matter between		
Dharmesh Rajnikant Shah and another	...	Plaintiffs
Vs.		
Bharti Rajnikant Shah and another	...	Defendants

Mr. D. M. Joshi for Applicant / Defendant No.1.
Mr. Jain a/w. Mr. A. R. Bapat for Plaintiffs.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 24, 2017

P.C. :

Heard Mr. Joshi, learned Counsel for the applicant in support of the Motion and Mr. Jain, learned Counsel for plaintiffs at length.

2. By this Motion, applicant, hereinafter referred to as 'defendant No.1', has inter alia prayed for appointment of a fit and proper person as Receiver with direction to take possession of movable and immovable properties left by deceased Rajnikant Muljibhai Shah, as more particularly set out in the Schedule-I attached to the Motion except immovable properties set out at Sr. No.5 and 6 of the said Schedule, as the same are matrimonial home and are presently in exclusive use, occupation and possession of defendant No.1 and her daughters and except moveable properties set out as Sr. No.16 and 17 of the said Schedule, which are two fixed deposit receipts, presently standing in the name of defendant No.1; for giving accounts of all the income received from the properties mentioned in Schedule-I with direction to plaintiffs to pay 1/4th amount of income of such other amount as may be deemed fit and proper.

3. Mr. Joshi submitted that plaintiffs have instituted Testamentary Petition No.278 of 2015 for Letters of Administration with the last Will and Testament annexed to the Property and Credits of Rajnikant Muljibhai Shah (for short 'deceased'). He submitted that deceased was a widower with three children namely, plaintiffs and defendant No.2-Ekta. Defendant No.1 married to the deceased on 24.04.2010. The marriage was registered on 11.07.2013. At the time of marriage, she was widow with two daughters, Bhavika and Stuti. Rajnikant Muljibhai Shah expired on 21.07.2014. Plaintiffs have instituted Testamentary Petition for Letters of Administration on the ground that deceased have executed Will dated 23.07.2013. He has taken me through the description of immovable property and submitted that plaintiffs are in possession of various immovable properties and are carrying on business. Under the Will, plaintiffs are supposed to pay Rs.20,000/- per month to the defendant No.1. He submitted that after the death of the deceased on 21.07.2014, till date, plaintiffs have not paid any amount to the defendant No.1. He has taken me through the reply filed by the plaintiff No.1, and in particular paragraphs 4 and 5. In paragraph 4 of the affidavit, plaintiff No.1 contended that as provided in the Will, the earmarked amount of Rs.20,000/- per month is regularly being paid to the defendant No.1. The amount is paid upto 16.06.2017. He submitted that the said statement is patently false as no amount is paid to the defendant No.1. Though the plaintiffs are in possession of immovable properties and carrying on business, they are not paying any amount to the defendant No.1 and therefore, Receiver may be appointed to invite the bids and whosoever gives higher bid, he may be put in possession of the immovable property. He submitted that the defendant No.1 will bring the bidders for participating in the proposed bid.

4. On the other hand, Mr. Jain, upon taking instructions from the

plaintiffs, states that plaintiffs will clear the arrears @ Rs.20,000/- per month for the period from 21.07.2014 to 31.08.2017, which comes to Rs.7,40,000/-, within six months from today. Plaintiffs will not seek further extension of time for paying that amount. He further states that from 01.09.2017, plaintiffs will go on remitting amount of Rs.20,000/- through R.T.G.S. in the account of defendant No.1, whose details are as under:

Name	: Bharti Rajnikant Shah
Bank Name	: The Kurla Nagarik Sahakari Bank Limited
Branch	: Ghatkopar
IFSC Code	: SRCBOKNS011
A/c No.	: 011010100007444

5. Mr. Jain further assures that arrears will be transmitted through R.T.G.S. The statements made by Mr. Jain are accepted in the form of undertaking.

6. In view thereof, Motion is disposed of in the following terms:

a. Plaintiffs shall clear the arrears from 21.07.2014 to 31.08.2017 @ Rs.20,000/- per month within six months from today and shall not seek extension of time for clearing the arrears. The amount shall be transmitted through R.T.G.S. 50% of the arrears shall be transmitted within 3 months from today and the remaining 50% shall be transmitted within 6 months from today;

b. In addition to the payment of arrears, plaintiffs will go on transmitting Rs.20,000/- per month in the Account of the defendant No.1 from 01.09.2017 through R.T.G.S.;

c. Payment and acceptance shall be without prejudice to the rights and contentions of the parties.

7. List the matter for 'reporting compliance' after three months.

(R. G. KETKAR, J.)