

1. The grievance raised by the Petitioner is that the Respondent/Caveator-Yezdi Maneck Kotwal has misappropriated a sum of Rs.39.88 lakhs, say approximately Rs.40,00,000/- from the estate even after an order of injunction was passed by this Court on 22nd June 2016 readwith order dated 24th June 2016. Mr. Singh after taking instructions states that this is an incorrect amount and the correct amount is only Rs.30,00,000/-.

2. In the order dated 20th December, 2016, this Court has observed in para No.1 as under:-

1. *"There is a further Affidavit in Reply of Defendant of 17th October 2016. In this there are various statements made pursuant to the previous order. Whether or not these constitute a sufficient explanation for Defendant's conduct is a matter I will defer to a later date. I note, however, that in the last line of the Affidavit the Defendant has undertaken to this Court to deposit in the State Bank of India account held by the deceased the amounts which belong to that estate and the details of which are mentioned in the earlier parts of the Affidavit. This undertaking is now specifically accepted as undertaking to the Court. The*

defendant is put to notice that as and when this undertaking is required to be enforced, the Defendant will be expected to make a deposit in the State Bank of India".

3. At this Stage, Mr.Singh states that the defendant has a sum of Rs.14,00,000/- belonging to the estate with him. That amount, the defendant no.1 says he will deposit with the Prothonotary and Senior Master, High Court, Bombay before 27th March 2017. Statement Accepted.

4. Mr.Singh states that Defendant no.1 has no objection for appointment of an Administrator for the estate and defendant No.1 shall handover all the fixed deposit receipts to the Prothonotary and Senior Master, High Court, Bombay on or before 27th March 2017.

5. The defendant no.1 shall also pay over to the Prothonotary and Senior Master, High Court, Bombay all proceeds of shares which belonged to the deceased as mentioned in para no.16 of the affidavit dated 17th October,

2016 of Defendant no.1 on or before 27th March 2017 with the Prothonotary and Senior Master, High Court, Bombay.

6. It is also clarified that if there is anything which belonged to the estate which is not specifically mentioned in this order, those amounts shall also be deposited with the Prothonotary and Senior Master, High Court, Bombay by 27th March, 2017. The forwarding letter from the Advocate for Defendant no.1 shall enclose an affidavit from Defendant no.1 giving details, break up of each of the amount being given.

7. All other assets with a list thereof shall be handed over to the Administrator being appointed. The forwarding letter shall also enclose an Affidavit of Defendant No.1 giving details of the assets being handed over to the Administrator, whether physically or by way of title deeds/ other documents with photocopies thereof annexed to the Affidavit. The affidavits shall also contain a statement that he has not suppressed anything from this Court. Copy of the forwarding

letters with the enclosures shall also be handed over to the Advocate for Petitioner.

8. So far as the Administrator is concerned, Mr. K.K.Trivedi, Commissioner for taking accounts of this court, is appointed as Administrator of the estate of late Behram Kaikhushroo Kotwal. Both the parties shall meet the Commissioner on 1st April 2017 for preliminary meeting at the time convenient to the Commissioner. The fees of the Administrator and expenses of the Administrator to be fixed by this Court to be paid out of the estate of the deceased.

9. Mr.Cama and Mr.Singh jointly request that Mr. Naushad Engineer, an Advocate practising in this Court be appointed as a Mediator to mediate on all disputes between plaintiff and Defendant No.1 not just restricted to the Petition. The fees and the expenses of the Mediator shall be shared equally between the Petitioner and Defendant No.1 and the same is subject to final adjustment from the estate.

10. Notice of Motion accordingly disposed.

11. The Contempt Petition be listed for admission on 21st April 2017.

12. Mediator is requested to complete the mediation process and submit the report on or before 30th of April 2017.

(K. R. SHRIRAM, J)