

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

CONTEMPT PETITION NO. 69 OF 2016

IN

NOTICE OF MOTION NO. 512 OF 2007

IN

SUIT NO. 300 OF 2007

Pushpaben Narottam Harsora	]	Petitioner
		[Orig. Plaintiff]
Vs.		
Jitendra Narottam Harsora & Ors.	]	Defendants
		[Org. Defendants]

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Mr. Y.C. Naidu a/w A.K. Dalal i/b Rahul Karnik, for petitioner.
Mr. Snehal Shah with Deepti Panda with Ms. Dharmika Patel i/b
M/s. Purnanand & Co., for respondent No.4.

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CORAM : R.G. KETKAR, J.

DATE : 13TH SEPTEMBER, 2017.

P.C.

Heard Mr. Naidu, learned Counsel for the petitioner
and Mr. Shah, learned Counsel for respondent No.4 at length.

2. This Petition is instituted alleging breach of order dated 12th August, 2009 passed by this Court [Coram: S.J. Vazifdar, J. as His Lordship then] in Notice of Motion No. 512 of 2007 in Suit No. 300 of 2007.

3. Mr. Naidu submitted that by order dated 12th August, 2009, this Court restrained all the parties from disposing of,

alienating, encumbering, parting with possession or creating third party right, title or interest in respect of the estate of Narottam Harsora [for short 'deceased'] and the said order was to operate only up to the disposal of the Probate Petition and thereafter, only, if the Probate Petition is dismissed. The estate of the deceased includes Flat No. 41 in New Summerville Premises Co-operative Society Ltd [for short 'Said Flat'].

4. Mr. Naidu submitted that respondent No.4 made an application before the District Deputy Registrar for entering his name in the share certificate of the said flat. In pursuance of that application, on 14th July, 2016, name of 4th respondent was entered into share certificate which indicated that said flat is transferred in his name along with the petitioner. He submitted that by making application before the District Deputy Registrar and by entering his name, respondent No.4 has committed breach of order dated 12th August, 2009 and as such is liable to be proceeded under the Contempt of Courts Act, 1971.

5. On the other hand, Mr. Shah submitted that during lifetime, deceased has submitted nomination to the Society. Respondent No.4 is nominated by the deceased and in pursuance thereof, entry is made in the share certificate. He also relied upon paragraph 22 of the judgment in the case of **Indrani Wahi Vs. Registrar of Co-operative Societies and others, (2016) 6 Supreme Court Cases 440**. The Apex Court has held under;

“Having recorded the above conclusion, it is imperative for us to deal with the conclusion recorded in para 6

[already extracted above at p. 448-h and p.449a-b) of the judgment of this Court in Usha Ranjan Bhattacharjee case. In this behalf, it is necessary to clarify that transfer of share or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the cooperative society concerned, and is binding on the said society. The cooperative society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased”.

He submitted that Society has no option, except to transfer the membership in the name of nominee, in consonance with provisions of Maharashtra Co-operative Societies Act, 1960 and would have no relevance to the issue of title between the inheritors or successors to the property of the deceased. Mr. Naidu submitted that petitioner has challenged nomination as also order passed by the District Deputy Registrar. It is made clear that, I have not gone into merits of the case. The concerned Authority shall decide the proceedings un-influenced by this order.

6. In view of the legal position, subject to clarifying that nomination in respect of the said flat shall be subject to the outcome of administration suit, no case is made out for initiating contempt Petition against 4th respondent. Petition fails and the same is dismissed.

[R.G. KETKAR, J.]