

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

**CONTEMPT PETITION NO.5 OF 2015
IN
NOTICE OF MOTION NO.138 OF 2012
WITH
CONTEMPT PETITION NO.4 OF 2012
WITH
CONTEMPT PETITION NO.2 OF 2014
IN
TESTAMENTARY SUIT NO.29 OF 2012**

Shernaz Faroukh Lawyer & Anr.

....Petitioners

V/s.

Manek Dara Sukhadwalla

....Respondent/
Contemnor

Mr.I.M.Chagla, Senior Advocate a/w. Mr.F.E.Devitre, Senior Advocate, Mr.Rahul Narichania, Senior Advocate, Mr.Naval Agarwal, Mr.Jeehan Mehta, Mr.P.A.Kabadi and Ms.Naira Jejeebhoy and Ms.Taruna Nagpal i/by Doijode Associates for Petitioners (in all Petitions).

Mr.Ranjan Bachawat, senior advocate a/w. Mr.Krishnaraj Thaker i/b M.K. Tanna and Mr.Kamran Shaikh (9.01.2017) for Respondent (in all Petitions).

Mr.Manek Dara Sukhadwalla, Respondent present in person.

**CORAM : K.R.SHRIRAM, J.
RESERVED ON : 6TH DECEMBER 2016.
PRONOUNCED ON : 9TH JANUARY 2017.**

P.C.

1 This is one more matter where a party, in this case, the Respondent, who despite being given repeated opportunity has repeatedly abused the liberty granted by the Court. The Respondent, if let off, it will erode the

faith that the public have on judiciary. The rule of law is premised upon the faith reposed by the people in the justice delivery system. To prevent erosion of that faith, contemptuous behaviour needs a strict treatment.

These three Contempt Petitions have been filed seeking action against the same Respondent- Manek Dara Sukhadwalla under the Contempt of Courts Act, 1971 charging against him of having contumaciously and deliberately breached orders of this Court. The Respondent has filed an application for Probate of a Will of one Late Purvez Burjor Dalal (PBD), claiming to be the Executor under the said Will. The Probate Petition has been independently challenged. We are not going into the merits of the Probate Petition . It is alleged that the Respondent has deliberately and contumaciously not disclosed or submitted incomplete disclosures repeatedly of the assets of the said PBD and of his dealings with the estate of PBD. According to the Petitioners, the Respondent has been given many opportunities to make full disclosures but the Respondent was deliberately giving piece-meal and incomplete disclosures. According to the Petitioners, the Respondent is on a false assumption that the Courts do not take such acts or omissions seriously or commit any party in contempt. The Petitioners' case is that the gravity of the contempt is aggravated by the fact that the Respondent claims to have acted as an Executor of the estate of the deceased. It is alleged that the Respondent owed a fiduciary duty not only to

the estate but also primarily to the Testamentary Court and even the piecemeal or incomplete disclosures have not been made voluntarily but only after Court Orders compelled the Respondent to do so and the Respondent has repeatedly abused the liberty granted by the Court.

2 The Petitioners' allege breach and continued defiance of orders of this Court passed on 21st June 2012, 24th December, 2013 and 29th June 2015, each directing the Respondent to make full and complete disclosure of the assets belonging to the estate of Late PBD and his dealings therewith. It is alleged that the Respondent has filed 8 Affidavits including 3 of disclosure from time to time in these 3 Contempt Petitions and in related matters and the fact that so many affidavits of disclosure have to be filed itself shows that the Respondent has been economical with the truth. It is also stated that the affidavits have also setup contradictory stories and an unconditional apology and justification cannot go hand in hand. An apology must be a bona-fide act of contrition and unless offered at the earliest opportunity and in good grace is shorn of penitence. It is alleged that the Respondent declined to tender any apology in the Affidavits filed to Contempt Petition Nos.4 of 2012 and 2 of 2014 and has filed a belated apology in his reply to the last Contempt Petition No.5 of 2015. Such an apology is insincere and an attempt to relieve the Respondent of the natural consequences of his

contumacious conduct.

3 The Respondent has till date filed 8 affidavits (including in these 3 Contempt Petitions) including, as already stated, with regard to his purported disclosure of assets and his dealings viz.:

(i) Disclosure Affidavit dated 12th July 2012, filed in Notice of Motion No.138 of 2012, pursuant to Orders of this Hon'ble Court dated 21st June 2012 and 4th July 2012 ("1st Disclosure Affidavit").

(ii) Affidavit in Reply to Contempt Petition No.4 of 2012, dated 10th April 2013.

(iii) Affidavit dated 8th July 2013 in reply to Notice of Motion No.138 of 2012 for appointment of Administrator and injunction.

(iv) Affidavit dated 27th July 2015, in the Administrator's Report No.1 of 2014, pursuant to Order dated 29th June 2015 ("2nd Disclosure Affidavit").

(v) Additional Disclosure Affidavit dated 11th August 2015, filed in the Administrator's Report No.1 of 2014 ("3rd Disclosure Affidavit").

(vi) Affidavit in Reply to Contempt Petition No.2 of 2014, dated 23rd October 2015.

(vii) Affidavit in Reply to Contempt Petition No.5 of 2015, dated 25th July 2016 *inter alia* purporting to tender an apology for the first time.

(viii) Further Affidavit in Contempt Petition No.5 of 2015,

dated 30th September 2016, attempting to explain his previous conduct; this Affidavit was made after the conclusion of the Petitioner's arguments and virtually at the end of the time of hearing of the subject Petitions.

4 Despite the opportunities granted by the Court and the 8 affidavits filed, there is still no complete disclosure of assets or his dealings therewith or in respect of the breaches alleged in the present Contempt Petitions as more fully set out herein.

5 The controversy between the parties is that the Petitioners allege that they were appointed as executors of a last will and testament dated 22 Nov 2010 and the Petitioner no.2 was the beneficiary, whereas, the Respondent claims to be the executor of the last will and testament dated 8 Sept 2011, both allegedly executed by PBD. On 7th December 2011, PBD expired in Mumbai.

6 Testamentary Petitions for Probate of the respective Wills and Caveats thereafter came to be filed by the Petitioners and the Respondent, respectively. The Petitioners filed on 3rd May 2012 Notice of Motion No.138 of 2012 in Testamentary Petition No.29 of 2012 for injunction and appointment of an administrator of the estate as also for full disclosure by the Respondent who claimed that he has been employed by PBD, about a

year before he expired, to look after his properties and to keep accounts of the properties.

7 Order dated 21st June 2012 was passed by this Court in Notice of Motion No.138 of 2012 in Testamentary Suit No.29 of 2012 granting ad-interim injunction against the Respondent and, inter alia, directing the Respondent to make a full disclosure of the assets and his dealings with the Estate of PBD. The Respondent was also restrained from making any representations to any person on the basis of and/or from acting in furtherance of the alleged Will dated 8th September, 2011.

8 The Respondent appealed against the Order dated 21st June 2012. By Order dated 4th July 2012, the Division Bench disposed of the Appeal (No.335 of 2012) by permitting the affidavit of disclosure to be filed in a sealed envelope, and it was left to the Learned Single Judge hearing the said Notice of Motion to decide whether the sealed envelope was to be opened.

9 The 1st Affidavit of Disclosure dated 12th July 2012 was filed by the Respondent in a sealed envelope. It has been the case of the Petitioners that the said Disclosure Affidavit, *inter-alia*,:

(a) Does not disclose the existence of lands at Nashik and

Bachav, and shops and hotels at Andheri and Vile Parle, which had previously been referred to by the Respondent in an FIR filed by him (after the order of 21st June 2012) against the Petitioners;

(b) Did not furnish inventory and accounts with regard to the entire estate.

(c) Suppressed details of bank accounts, mutual funds, shares, and investments in government sector.

(d) Suppressed arrangements made by the Respondent with 3rd parties to conduct litigation purportedly on behalf of the Estate (which came to light later only when the Respondent made several contradictory statements in that behalf on oath in later Affidavits).

(e) Suppressed a YES Bank account opened by the Respondent in the name of the “Estate of Mr. Purvez Dalal” which came to light only on the Administrator of the Estate (appointed by the Court’s order dated 24th December 2013) later obtaining copies of another account in Kotak Mahindra Bank which in turn referred to the Yes Bank account.

(f) Did not provide copies of any bank statements or other relevant documents.

(g) Suppressed his alleged donation to a purported Trust called Avabai Hormusji Charitable Trust (Avabai Trust), which appears to be a dubious Trust, if at all it exists and which fact was disclosed for the first time by the Respondent only much later when compelled to do so, once the Bank Account statements came on record;

(h) Suppressed payments to and purported arrangements with one Amoha Traders, which as later learnt, was used as a conduit to take away large amounts from the estate accounts.

(i) Suppressed dealings for more than 2 months from the date of death of PBD in regard to the opening on 15th February 2012 of the Kotak Mahindra Bank estate account.

(j) Disclosed only that the Respondent had received rent towards Dalal House at Vile Parle from some tenants and that at the time of taking inventory, cash was found in a cupboard of the Deceased and in a Godrej Vault. The Respondent gave no particulars of how these amounts had been dealt with and no explanation for why none of these amounts were reflected in the estate bank accounts / statements (obtained by the Administrator subsequently, after the Respondent did not furnish the same).

10 The Petitioners state that at the hearing of the said Notice of Motion on 14th August 2012, the Learned Single Judge directed that the Petitioners be given inspection as well as a copy of the Respondent's Affidavit of Disclosure at which time the Petitioners learned of some of the above facts. The Petitioners then filed Contempt Petition No.4 of 2012 on 5th November 2012 against the Respondent for willful breach of the Order dated 21st June 2012. Notice on the Petitioner was issued by an Order dated 14th February 2013.

11 By Order dated 24th December 2013, the said Notice of Motion No.138 of 2012 was disposed off, *inter-alia*, appointing an administrator of the estate of PBD and directing the Respondent to hand over possession of the properties of PBD in their possession if any including movables, all documents in respect of the estate of the deceased, details of the bank accounts of the deceased, all properties disclosed in the schedule to their

respective testamentary Petitions within four weeks to the Administrator.

12 The Respondent appealed against the said Order dated 24th December 2013. The Petitioners state that the averments in the said Memo of Appeal disclosed several hitherto suppressed facts and further incomplete disclosures causing the Petitioners to file the second Contempt Petition No.2 of 2014 dated 27th June 2014 against the Respondent. Notice was issued therein by an Order dated 20th July 2015.

13 The Division Bench, by an Order dated 8th August 2014 confirmed the Order dated 24th December 2013 in Notice of Motion No.138 of 2012 for injunction and appointment of an Administrator. The Respondent's Special Leave Petition to the Hon'ble Supreme Court against the said order dated 8 Aug 2014 was dismissed by an Order dated 5th September 2014.

14 On 11th December 2014, the Administrator filed an Administrator's Report No.1 of 2014. Prayer (b) thereof read as follows: "*Mr.Manek Dara Sukhadwalla be directed to handover to the Administrator list of movables and documents in respect of various assets of the late Purvez Burjor Dalal property-wise*"

15 This report was necessitated as the Respondent had merely handed over to the Administrator 282 keys of various cupboards of PBD without any particularized inventory. The Administrator then called upon the Respondent to attend the flat on 10th November 2014 to identify the keys and hand over documents with regard to the various assets, property-wise. The Respondent, however, it is alleged did not attend the suit flat on that date and instead, in a letter dated 19th February 2015 addressed through his advocate contended that the administrator calls a locksmith for the task.

16 By an order dated 28th April 2015 in the said Administrator's Report this Court recorded the contention of the Counsel for the Petitioners that the Respondent had himself carried out an inventory of these cupboards and was in a position to identify the keys; recorded the contention of the Respondent that he was not in a position to identify the keys and the best option would be to have a locksmith appointed; and directed the Respondent to file a reply to the Administrator's report within four weeks so as to make the Respondent's stand clear on oath. The Respondent filed his Affidavit in reply to the Administrator's Report on 9th June 2015 and only annexed the letter of the Respondent's advocate dated 19th February 2015 without offering any explanation as to how the Respondent could claim he will not be able to identify the keys when he had himself made the affidavit

of disclosure dated 12th July 2012 containing an inventory of contents of the cupboards.

17 By an Order dated 9th June 2015 in the said Administrator's Report, this Court observed that the Respondent's said Affidavit dated 9th June 2015 in the Administrator's Report did not address the issues that were referred to in the Order dated 28th April 2015 and the Respondent was directed to remain present in Court on the next occasion to submit an explanation to the Court.

18 By an Order dated 29th June 2015 passed in the said Administrator's Report this Court recorded the statement of Counsel for the Respondent that the Respondent would identify the keys with reference to each cupboard drawer and safe, if necessary with the help of a locksmith, within a period of one week. The said Order also directed the Respondent to make a disclosure on affidavit that "*must contain all particulars*", and recorded the statement of the Advocate for the Respondent that "*every piece of the estate of the deceased shall be disclosed in full measure in the disclosure affidavit, which she now proposes to file*".

19 Pursuant to the Order dated 29th June 2015, the Respondent filed

another Disclosure Affidavit dated 27th July 2015 (the said 2nd Disclosure Affidavit) which, ,:

- i. Annexed an incomplete set of the statements of the Estate Account opened in the name of PBD in YES Bank;
- ii. Did not disclose any facts with regard to the alleged financing arrangements with Amoha Traders Pvt. Ltd. or payment to Avabai Trust in the body of the Affidavit, but annexed Exhibit 8 purporting to explain the entries in the Kotak Mahindra estate account bank statement. With regard to Amoha Traders Pvt. Ltd., it was simply stated: “*Reimbursement of Expenses after Demise of P. B. Dalal (Funeral, Medical, Legal etc.)*”. With regard to the Avabai Hormusji Charitable Trust, it was simply stated “*Amount paid towards Donation*”. No details or particulars of such dealings (involving large amounts of estate funds) were given, despite orders of this Hon’ble Court.
- iii. Craved leave to file further Compilations of Documents (thereby admitting that certain documents had even then not been disclosed);

20 On 11th August 2015, the Respondent filed an Additional Disclosure Affidavit (the 3rd Disclosure Affidavit) which, *inter-alia*, for the first time put forth an arrangement / transaction entered into by the Respondent on behalf of the said Estate with the said Amoha Traders. This, the Petitioners submitted was at variance with the stand taken by the Respondent previously in Appeal (Lodg.) No.7 of 2014.

21 The Administrator directly secured statements of the Estate Account opened by the Respondent in Kotak Mahindra Bank and forwarded the said statements to the parties by his letter dated 12th December 2014. These statements had to be obtained by the Administrator directly since the Respondent had not produced them. The said statements from Kotak Mahindra Bank gave an indication that the Respondent was in breach of Orders of this Court. Consequently, the Petitioners then filed Contempt Petition No.5 of 2015 on 8th December 2015.

22 The broad heads of contempt as contended by the Petitioners are as under :

FAILURE TO DISCLOSE LANDS AT NASHIK AND BACHAV AND SHOPS AND HOTELS AT ANDHERI & VILE PARLE:

23 The Respondent has disclosed in a statement to the police recorded on 11th July 2012, the day before he filed the 1st Disclosure Affidavit dated 12th July 2016, that the estate included shops and hotel at Andheri and Vile Parle and properties and lands at Manmad, Nashik and Bachav. The said statement dated 11th July 2012 is the subject of the FIR dated 16th July 2012.

24 The Respondent's schedule to his Testamentary Petition filed on 23rd December 2011 as well as the 1st Disclosure Affidavit dated 12th July 2012 refers to land and factory premises at Manmad known as Hindustan Bone Mills. The Respondent did not disclose the existence of the shops and hotel at Andheri and Vile Parle and properties and lands at Nashik and Bachav. The Respondent's failure to disclose these properties of PBD, it is alleged, constitutes breach of prayer clause c(i) granted by Order dated 21st June 2012. It is also alleged that it also constitutes breach of prayer clause c(ii) granted by the said Order for failure to furnish inventory and accounts in respect of the said immovable properties.

25 The Respondent's Affidavit in Reply in Contempt Petition No.4 of 2012 dated 16th April 2013 sought to show three distinct properties as one, as if the Hindustan Bone Mills at Manmad disclosed in the schedule were the same as the lands at Nashik and Bachav. Manmad, as one would know, is approximately 90 kms. from Nashik, and Bachav is a town in the Kutch Region of Gujarat. These three properties, therefore, are clearly distinct.

26 However, in his Affidavit in Reply dated 25th July 2016 filed in Contempt Petition No.5 of 2015, the Respondent stated that since PBD had not stated the Bachav property in the testamentary Petition filed for probate

of the Will of his brother late Jamshed Dalal, the Respondent believed that the brothers had disposed off the property during their lifetime.

27 At the final hearing of the Contempt Petitions, Counsel for the Respondent Shri Bachawat floated an entirely new submission across the bar, contradicting the earlier statements on oath of the Respondent. Counsel for the Respondent contended that the mention of the Bachav property in the FIR was “*mere puffery*”, simply to demonstrate to the Police that the Respondent was a man of means. As such, it was submitted, the same might be a case of a false statement to the police, but the same did not fall under contempt jurisdiction.

28 Thereafter, on 30th September 2016, during the hearing of these contempt Petitions, the Respondent filed yet another Affidavit, the contents of which are contrary to the Respondent’s earlier statements on oath. The said affidavit dated 30th September 2016 stated that “*in hindsight, I have made a mistake in stating that the deceased owned property at Bachau*”, that he had “*not dealt with any property of the deceased at Bachau*”, and that he undertook to “*amend the Schedule of Assets in the Testamentary Suit filed by me in the event further details to establish the deceased’s ownership of any property in Bachau became available.*”

29 It is a remarkable coincidence that PBD's ownership of the Bachav property, which the Respondent's counsel claimed was “*mere puffery*” and/or “*a mistake*”, did in fact turn out to exist and formed part of the Estate. The papers with regard to “Bharat Bone Mills” at Bachav (in Gujarat) were originally annexed to the reply dated 12th December 2012 of the Nanavatis in Miscellaneous Petition (L) No.916 of 2012 in Testamentary Suit No.25 of 2012. The Petitioners have annexed the said papers to their Rejoinder.

30 On the Learned Single Judge (Dhanuka J.) holding that the properties at Bachav were suppressed, the Respondent herein preferred an appeal. The Respondents Memo of Appeal specifically raised the ground that the Learned Single Judge had erred in holding that the Respondent had suppressed assets. On the Division Bench dismissing the said appeal, the Respondent filed an SLP in the Supreme Court, wherein one of the grounds of appeal was “*that the Hon’ble High Court erred in concluding that properties at Bachav and Manmad referred to in the police complaint were not adequately reflected...particularly when all papers available in relation to the Bachav and Manmad properties were duly filed and on the record...*” The existence of the property and its being part of the estate of PBD was thus admitted. The SLP was subsequently dismissed on 5th September 2014.

32 Counsel for the Respondent Shri Bachawat also took the stand that even the Petitioners had not disclosed the Bachav Property in the Schedule to their Probate Petition . This, however, overlooks the fact that the Petitioners were unaware of the extent of the property owned by PBD and the fact that the Petitioners expressly stated that they were in the process of ascertaining other assets and properties of PBD. On the other hand, the Respondent had expressly stated that he used to look after the property of PBD situated in and outside Mumbai and that he was keeping accounts of them.

32 With regard to the shops and hotel at Andheri and Vile Parle, the Affidavit in Reply in Contempt Petition No.4 of 2012 states that the Respondent's reference to properties at Vile Parle was a reference to Dalal House at Vile Parle, and that he had referred to Dalal House being in the vicinity of Andheri-Vile Parle. No explanation has been sought to be furnished with regard to shops and hotels at Andheri and Vile Parle in the Affidavit in Reply to Contempt Petition No.4 of 2012. It was argued that the 1st Disclosure Affidavit dated 12th July 2012 had disclosed that rents were being received in respect of Dalal Building at Vile Parle, and thus, the property at Vile Parle was disclosed. Even if we accept this constitutes disclosure of shops, there is no explanation with regard to the existence of

the hotel at Andheri or Vile Parle as admitted in the FIR.

MAKING “ARRANGEMENTS” TO HAVE LITIGATIONS WITH THIRD PARTIES BEING CONDUCTED FREE OF COST TO THE ESTATE, AND DEFENDING SUITS ON BEHALF OF THE ESTATE:

33 The Memo of Appeal dated 6th January 2014 of the Respondent, against the judgment of Dhanuka J., for the first time stated that the Respondent “*had made special arrangements*” for litigations to be pursued free of cost to the estate. These obviously constituted his ‘*dealings*’ with the estate. However, no such arrangements were disclosed in the Disclosure Affidavits. The Respondent’s later filed written submissions dated 9th June 2014 in the Appeal, alleged that arrangements for pro bono handling of litigations “*have currently been made*” by the Respondent. The Respondent had not previously disclosed any particulars as to these “*special arrangements*”, or the parties thereto or the documentation thereof though these were his dealings with the Estate, which were bound to be disclosed under Court’s orders. Such arrangements were made by acting upon or in furtherance of the alleged Will dated 8th September 2011. The Respondent refused to disclose acts, deeds and things done by the Respondent with regard to the assets of PBD, and to render an account of his dealings with the Estate of PBD.

34 Even in his Affidavit in Reply, the Respondent nevertheless continued to decline to furnish any particulars. The Respondent only stated that he had made arrangements for “*pro bono handling of the pending litigations concerning the estate (i.e. Suit no. 2763 of 2008 and Suit no. 137 of 2010)*”, and that the arrangements were made “*well prior to the Order dated 21st June 2012*”. These were, in any event, not disclosed in the Affidavits as they were bound to be.

35 The Respondent’s breach of his obligation to make proper and full disclosure of the ‘arrangements’ is highlighted and accentuated even more by the fact that his statement that the “*arrangements*” were “*pro bono*” was falsified by his subsequent affidavit in Reply dated 25th July 2016 (filed in Contempt Petition No.5 of 2015) in which (whilst reiterating that the “*arrangements*” for litigations were “*pro bono*” and “*free of cost*” to the estate) the Respondent now contradicted himself by stating that he had entered into an arrangement with one Daroowala for payment of expenses “without interest”, for which Rs.17,08,147/- had been repaid to one ‘Amoha Traders’ out of an amount of Rs.27,92,147/- “*or more*”. The Respondent’s later attempt to justify his false assertion that the arrangements were ‘*pro bono*’ because no interest was being charged, by Amoha Traders cannot be accepted.

SUPPRESSION OF DEALINGS WITH THE ESTATE WITH REGARD TO ALLEGED ARRANGEMENT WITH AMOHA TRADERS / MR. ASFANDIAR DAROOWALA TO FINANCE EXPENSES RELATING TO THE ESTATE, IN VIOLATION OF THE ORDERS DATED 21ST JUNE, 2012 AND 29TH JUNE, 2015:

36 As noted above, in his Memo of Appeal dated 6th January, 2014 in Appeal (Lodging) No.7 of 2014 and in the Written Submissions dated 9th June, 2014 filed on his behalf in the said Appeal, the Respondent claimed that he had made special arrangements for litigations (being Suit No.2763 of 2008 and Suit No.137 of 2010) to be pursued “*pro bono*” and “*free of cost*” to the Estate. The Respondent gave no details or particulars regarding this ‘*arrangement*’. The Petitioners complained of these dealings and lack of particulars in Contempt Petition No.2 of 2014. The Respondent, however, did not even then provide any particulars of the ‘*arrangement*’.

37 It was only after receipt of the said Kotak Mahindra Bank statements by the Administrator on 12th December 2014, that it was revealed for the first time that an amount of Rs.17,08,147/-, later enhanced by the Respondent to Rs.27,92,147/- or more, was transferred on 24th March, 2013 by the Respondent from the estate account to Amoha Traders. This dealing involves large moneys / assets of the Estate which was not disclosed by the Respondent in his Affidavit of Disclosure dated 12th July 2012, in breach of the disclosure directions in the Order dated 21st June 2012.

38 It may only be mentioned that 'Amoha Traders' is a company owned and controlled by one Jamsheed M. Panday, who the Petitioners' counsel identified from the beginning allegedly as a co-conspirator of the Respondent.

39 By Petitioners' letter dated 15th December, 2014 to the Administrator (with a copy to the Respondent's Advocates), the Petitioners, *inter-alia*, enquired about the nature and purpose of payment of such a large sum. The Respondent did not respond. The Administrator also specifically called upon the Respondent to furnish details of each entry in the bank statement of Kotak Mahindra Bank Ltd. (by his letters dated 26th December, 2014 and 10th April, 2015) and at the meeting held on 17th April, 2015. Again, the Respondent did not respond. The Administrator then addressed directly to Amoha Traders letters dated 7th January, 2015 and 23rd June, 2015 calling upon them to forward copies of documents and details relating to the said amount of Rs.17,08,147/- paid on 24th March, 2012 from the estate bank account. Again, there was no response. Amoha's refusal to respond to the letter of the Administrator was unnatural, if indeed it still remained a creditor of the Estate, as claimed.

40 Pursuant to the Order dated 29th June 2015, the Respondent filed

another Affidavit dated 27th July, 2015 (the 2nd Disclosure Affidavit). Even in this Affidavit, the Respondent suppressed and did not disclose any facts with regard to his dealings regarding the alleged financing arrangement with Amoha Traders. However, he annexed as Exhibit 8 to the said Affidavit, a purported “*explanation*” of the entries generally in the said Kotak Mahindra Bank Estate Account, showing against the Item dated 24th March, 2012 as if the amount of Rs.17,08,147/- paid to Amoha Traders was towards “*Reimbursement of Expenses after the Demise of P.B. Dalal (Funeral, Medical, Legal etc.)*”.

41 The Respondent then filed yet another affidavit dated 11 August 2015 (the 3rd Disclosure Affidavit) attempting a new explanation in this regard, viz., that he had “*reimbursed*” to one Asfandiar Daroowalla (who he claimed was a director of Amoha Traders) a sum of Rs.17,08,147/- from the Estate Account. The Respondent alleged that these amounts were spent for enabling the Respondent to carry on his functions as an Executor including legal expenses, that he accepted Mr. Daroowalla’s offer of monetary help, making it clear that the monies would be paid directly by Daroowalla to persons to whom it may become due from time to time. Having said so, the Respondent then purported to accept that he did not even have an account of the payments made by Daroowalla/Amoha Traders on behalf of the Estate.

It is clear that Daroowalla/Amoha Traders could not have paid the Estate's creditors/expenses without the Respondent instructing/consenting to the such payment. Yet, a deliberate attempt was made to suppress the recipients of these payments by Amoha Traders purportedly on behalf of the Estate. Not a single one of these dealings was disclosed. Therefore, there was breach of the disclosure order dated 21st June, 2012.

42 The story of the so-called "reimbursement" of Estate expenses by Daroowalla/Amoha Traders appears to be an eye-wash. The payment of these amounts by the Respondent from the estate funds to Amoha Traders under undisclosed arrangements comprised siphoning away estate funds and non-disclosure of this dealing with estate funds under some arrangement was to conceal facts from the Court and from the Petitioners, aggravating the contempt.

43 The Petitioners have set out Amoha Trader's association with one Jamsheed Panday to be as under :

1. The account opening form in respect of Kotak Mahindra Bank Estate Account was opened in the name of the Respondent and sets out "Preferred Email ID" as that of Amoha Traders Private Ltd., viz., "AMHOHATPL@REDIFFMAIL.COM".

2 The above account opening form shows the Respondent's telephone number as being "Telephone no.022-30281941", which is the phone number of Amoha Traders.

3 On further enquiry (on "True Caller", the internet Application), the said telephone number is shown as being in the name of Jamsheed Pandey. Notably, it is not disputed that the Respondent is the first cousin of Pandey's Wife, Firoza.

4 Asfandiar Daroowalla has no stake at all in Amoha Traders. He is not a shareholder.

44 In his Written Submissions dated 9th June 2014 in the Appeal, the Respondent had disclosed that the arrangement was on a 'pro bono' basis. Faced with the fact of his dealings with the Estate by having 'reimbursed' large amounts to Amoha Traders in his later affidavit dated 25th July 2016, the Respondent made a further contrary disclosure that:-

"...I reiterate that the estate has not incurred any additional cost for the funds availed from Amoha other than the repayment of the same. It is for this reason that I have stated earlier that the arrangement for legal expenses in regard to the pending proceedings were pro bono and free of cost to the estate".

45 In an attempt to justify his previous non-disclosure of material dealings with estate funds, the Respondent then attempted to justify his

seeking the help of Asfandiar Daroowala and Amoha Traders, by alleging that PBD had known the said Daroowalla and sought his assistance, *inter-alia*, in filing I.T. Returns. This, however, is contradicted by Respondent's earlier Affidavit in Reply dated 11th June 2012 (in Notice of Motion No. 138 of 2012) where the Respondent had stated:

“As the testator had not filed tax returns since 1984, the testator desired proper advise to be taken in the matter. In such circumstances, the said Mr. Burjor Dudhmal introduced the testator to Mr. Jamsheed Panday in or around April 2011.”

46 Respondent's attempt to justify or explain his suppression of facts in the Disclosure Affidavits is also unsatisfactory. Amoha Traders was not in a financial position to give interest free loans to the Respondent and was a loss-making company : the loss carried to its Balance Sheet for the Financial Year 2011-2012 was Rs.4,66,64,252/-, for the Financial Year 2012-2013 was Rs.4,63,93,445/- and for the Financial Year 2013-2014 was Rs.4,63,23,051/-. The Balance Sheets of Amoha Traders do not reflect any loans or advances given by Amoha Traders to any person or entity, let alone the Estate of PBD. Copies of Amoha Traders' Form 23 AC reflect this position. The non-disclosure of estate funds was obviously to hide sham dealing of estate funds by the Respondent.

47 Learned Counsel Shri Bachawat for the Respondent urged that the payments made to Amoha Traders were towards bona-fide expenses including legal expenses incurred, and that these dealings were before the injunction Order was passed. According to him, these payments were towards repayment of amounts lent by Amoha Traders to the estate. The Respondent, however, had no answer as to why the “loan” dealing were not disclosed in the Affidavit of Disclosure dated 12th July 2012.

FAILURE TO DISCLOSE DEALINGS OF THE RESPONDENT ON BEHALF OF THE ESTATE WITH “AVABAI HORMUSJI TATA CHARITY TRUST” AND REFUSAL TO GIVE PARTICULARS OF THE DEALINGS WITH THE SAID TRUST, IN BREACH OF THE ORDERS DATED 21ST JUNE, 2012 AND 29TH JUNE, 2015 (CP 5 of 2015) :

48 The Petitioners contended that the purported bequests to charities under the Will (which were to be decided by the Respondent) was only a ruse. The Petitioners contended that there are many public charities that recycle the “*donations*” back to the donor. Respondent avers on oath that he had dealt with the estate funds by paying, on or about 10th April 2012, an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs) to one ‘Avabai Hormusji Tata Charity Trust’. Yet, these dealings were not disclosed by the Respondent in his 1st Disclosure Affidavit dated 12th July 2012, though the Order dated 21st June 2012 required him to do so. An attempt was made to

project the said Avabai Hormusji Tata Trust was a trust of the Tatas. Thus, in his additional affidavit dated 14th June 2012 in Notice of Motion No.138 of 2012 the Respondent alleged: “... *I am inclined of providing the estate of the Testator to Charity Trusts of Tata, Godrej and Wadia’s in the ratio of 1/3rd each.*” The Petitioners had from the outset contended that the bequests to “charity” to be determined by the Respondent was illusory and an eye wash to disguise siphoning of the properties and was nothing but a clever ploy and the modus operandi to give an air of sanctity to the alleged will.

49 The Kotak Mahindra Bank statements (obtained directly from the bank by the Administrator) for the first time revealed the payment of the said amount of Rs.15,00,000/- from the Estate account (on 11th April, 2012) to the said “*Avabai Hormusji Charitable Trust*”. The Administrator specifically called upon the Respondent to furnish a statement of explanation of each of the entries in the Kotak Mahindra Bank statement (by letters dated 26th December, 2014, 10th April, 2015 and at the meeting of 17th April, 2015). It was not furnished. No disclosure was made by the Respondent. A letter dated 23rd June, 2015 was sent by the Administrator also to the Avabai Hormusji Trust calling for information regarding the ‘donation’. However, no response was received from the Respondent or the said Avabai Hormusji Trust.

50 The alleged “*donation*” was also contrary to the terms of the alleged Will dated 8th September, 2011 relied upon by the Respondent. Clause 2 of the purported Will enabled the Respondent to make donations only after obtaining probate. No Probate has been obtained.

51 Thus, this “*donation*” from the estate funds was concealed from the Court in the Respondent’s First Affidavit of Disclosure dated 12th July 2012. Even after the passing of the Order dated 29th June, 2015 by this Court, the Respondent’s 2nd Disclosure Affidavit dated 27th July, 2015 made no mention in the body of the Affidavit to any payment to Avabai Trust, but at Exhibit 8 the Respondent stated that the amount of Rs.15,00,000/- was paid to Avabai Trust as “*Amount paid towards Donation*”. The Trust, it also appears to be dubious.

52 The Respondent thereafter, in his Affidavit in Reply dated 25th July 2016 to Contempt Petition No.5 of 2015 claimed that the said trust was set up as a public charitable trust by Mr. Naval Tata sometime in 1954 in memory of his mother. It is claimed that the payment of Rs.15,00,000/- was made by way of a donation to the corpus of the Trust, that the donations made to the trust were eligible for exemption under Section 80 (G) of the Income Tax Act, and that the trust had duly issued a receipt for the donation.

A copy of the receipt for the same was annexed by the Respondent in his Reply. This purported receipt is only a computer-generated print out, claimed to be signed by a nameless trustee with no address or names of Trustees, or Registration No., or phone numbers or any other particulars. It is, to say the least, a receipt of extremely dubious nature. It appears to be fabricated for the purpose of these proceedings. No certificate under section 80 (G) has been issued or produced.

53 The Petitioner had addressed a letter dated 25th March 2016 to the Tatas inquiring whether the House of Tatas had any connection with the purported Avabai Hormusji Trust. The reply dated 29th April 2016 was in the negative. The Petitioner No.1 again addressed a letter dated 23rd August 2016 to the House of Tatas this time attaching a copy of the purported receipt and inquiring whether the House of Tatas had any connection with the said Trust. The Reply dated 24th August 2016 was again in the negative.

54 The failure of the Respondent to disclose such dealings with the purported Avabai Trust is in breach of the Orders dated 21st June 2012, 24th December 2013 and 29 June 2015. This undisclosed dealing with estate funds by the Respondent for payment to a dubious charity, viz., the alleged Avabai Trust, is an extremely serious matter. The said Trust has been used

and was intended to be used as a device to divert monies belonging to the Estate, under the garb of “donations.” Furthermore, the “receipt” on its face appears to be not genuine and appears to have been fabricated for the purpose of legal proceedings.

RECEIVING RENTS AND/OR DIVIDENDS AND DEPOSITING THE SAME INTO THE ESTATE ACCOUNT OF PBD:

55 The Respondent’s Affidavit dated 8th July 2013, filed after the ad-interim Order dated 21 June 2012 in Notice of Motion No.138 of 2012, states that rents and/or dividends received by way of cheques are being duly deposited into the Estate Account of late Shri Purvez Dalal.....”. Thus, the Respondent accepts that he continued to act as Executor under the Will and admittedly continued receiving rents and dividends. This conduct was in breach of prayer clause b(ii) granted by the Order dated 21st June 2012 and 24th December 2013, even as in July 2013. Even the bank accounts in which such rents/dividends were deposited were not disclosed by the Respondent.

56 This assumes great significance because in the Respondent’s Affidavit in Reply, he stated that until such time the Administrator took charge, the Respondent was constrained to establish an Estate Account and to deposit therein all dividends, rents etc. The only account generally referred to was

the Kotak Mahindra Bank Account. Significantly, the Affidavit in Reply did not deal with the allegations made in the Petition nor explain the averment made by the Respondent in his Affidavit dated 8th July 2013 that “*cheques are being duly deposited into the Estate Account*”

57 At the time of the hearing of the Petitions, Learned Counsel for the Respondent submitted that the 1st Disclosure Affidavit disclosed that rents were received in respect of the Love Dale Property at Peddar Road and Dalal Building at Vile Parle.

58 However, this argument does not deal with the charge (in Contempt Petition No.2 of 2014) that deposits were being made even after the injunction order dated 21st June 2012.

FAILURE TO FURNISH INVENTORY AND ACCOUNTS WITH REGARD TO THE ESTATE:

59 Despite the specific orders of this Court on 21st June 2012 (prayer clauses c (i) and c (ii)), the Respondent has failed to furnish inventory and accounts with regards to the Estate. The Respondent has purported to provide an inventory only as of 15th March, 2012. This is an ‘inventory’ limited to (i) movable assets and (ii) only those lying in Flat No.22, Modern

Flats. Even this inventory is incomplete and inaccurate and does not provide a complete picture. The Order of this Court dated 21st June 2012 did not contemplate or provide for a limited inventory only. The contents of cupboard Nos.7, 10, 13, 14 and 15 are not disclosed in the 1st Disclosure Affidavit dated 12th July 2012 on the ground that the same were locked and the Respondent did not have the keys. The later Reply dated 16th April 2013 to the Contempt Petition No.4 of 2012 thereafter purported to annex photographs of the external face of the said cupboards belatedly. These photographs are unclear. The particulars of the contents have not been provided till date.

60 The inventories is with regard to the movable assets and all the other immovable properties have not been provided, though the Respondent was obliged to do so by the terms of the said Order. No inventory of movables lying in the following premises was provided:

(i) 2 ownership Flats bearing (Nos.8 and 22) at Al Karim Manzil and stated to be “*self-occupied*” (Suit bearing No.2439 of 2011 filed by the Deceased on 22nd October 2011 admits that the Deceased’s personal belongings, furniture and fixtures were lying in the suit flat).

(ii) Land and factory premises at Manmad known as Hindustan Bone Mills mentioned by the Respondent in para 2 (c) of the 1st Disclosure Affidavit dated 12th July 2012.

The Reply dated 16th April 2013 to Contempt Petition No. 4 of 2012 stated that that the Respondent was “...attempting to verify

the full details of and status of the property...” and if there were any movables capable of disclosure. In the 2nd Disclosure Affidavit dated 27th July 2015, the Respondent gave the pretext that his attempts to secure details surrounding the Manmad property came to naught since no information was forthcoming on enquiry.

(iii) Land and factory premises at Bachav and Nashik (mentioned by the Respondent in his FIR as above).

(iv) Ownership Flat No.9A at Modern Flats mentioned at para 2 (f) of the 1st Disclosure Affidavit dated 12th July 2012.

61 This failure on the part of the Respondent to provide the inventory as ordered was noticed in the Order, dated 24th December 2013 of the Learned Single Judge in Notice of Motion 138 of 2012. The appeal therefrom was dismissed by an Order dated 8th August 2014, and the SLP therefrom was dismissed by Order dated 5th September 2014. The order dated 24th December 2013 has thus attained finality.

62 In his later Affidavit in Reply dated 25th July 2016 filed in Contempt Petition No. 5 of 2015, the Respondent then aggravated the contempt by falsely alleging that he had rendered complete and faithful inventory and accounts of his dealings. Apart from other facts on record establishing the contrary, this statement is contradicted by the Respondent’s own statement in the same affidavit wherein he denied having ever claimed that he had carried out any inventory of all the cupboards or that this was mentioned in his 1st Affidavit of Disclosure dated 12th July 2012.

63 This is contrary to the 1st Disclosure Affidavit, in which it is suggested that a full inventory was taken. The Memo of Appeal also suggests that the inventory was exhaustive and categorically stated that *“There are no other movable items belonging to the Estate of the deceased save & except if a bank locker with HSBC were to emerge...”* and also again asserts a full disclosure, this time said to be made in the Contempt proceedings. Thereafter, in a later affidavit dated 25th July 2016, the Respondent for the first time stated *“I deny that I have ever claimed that I have carried out any inventory of all the cupboards or that this is mentioned in my Affidavit of Disclosure dated 12th July 2012.”* Contrarily in the same Affidavit, the Respondent reiterated that he has *“rendered complete & faithful inventory & accounts of my dealings...”* These contradictory statements only emphasize the Respondent’s attempt to find excuses for not complying with the Order of this Court.

64 At the time of the final hearing, Counsel for the Respondent limited his submissions to a statement that the Respondent has complied with the order by making an inventory of the movables in the residence of PBD at 17/18 Modern Flats and had disclosed the same in the 1st Disclosure Affidavit (except in the case of some cupboards which he could not open).

65 The Respondent's excuse for not providing an inventory of the movables in the Al-Karim Manzil Flats (Nos. 8 and 22), viz., that the Schedule of Property attached to Testamentary Petition 5 of 2011, erroneously showed Flat Nos. 8 and 22 of Al-Karim Manzil as being "self-occupied" is only because he simply copied the same from the schedule regarding his brother Jamshed Dalal's probate is not correct. It was submitted at the hearing that Flat No.8 had been encroached by trespassers for which an FIR dated 10th September 2011 was filed by PBD and that the other flat was agreed to be sold during the lifetime of PBD, so that no inventory of these flats could be provided.

66 These are excuses that are unacceptable. The Respondent did not simply copy the Schedule of Property from Jamshed Dalal's probate Petition . He made alterations to the schedule with regard to Flat 9A of Modern Flats when contrasted with the Schedule of Properties of Jamshed Dalal's Will. BCCC Suit No. 2439 of 2011 filed by PBD evidences that PBD had recovered possession of that flat by 21st October 2011. Further, the Letter of Possession dated 21st December 2011 to one Vaseem Kapadia executed by the Respondent, he himself categorically stated "..... I am handing over quiet vacant and exclusive possession to you." Thus, the claim of 'trespassers' to justify not furnishing the inventory is falsified. In

BCCC Suit No.2439 of 2011, PBD himself stated that his personal belongings, furniture and fixtures along with a cupboard were lying in the said flat.

67 No explanation is even attempted by the Respondent for his refusal to provide the inventory of the movables lying in :

- i) Land and factory premises at Manmad known as Hindustan Bone Mills;
- ii) Land and factory premises at Bachav and Nashik;
- iii) Ownership Flat No.9A at Modern Flats.

**BANK ACCOUNTS, MUTUAL FUNDS, SHARES, INVESTMENTS
IN GOVERNMENT SECTOR:**

Bank Accounts and Mutual Funds

68 The Respondent provided limited particulars of only one of the Estate bank accounts and Mutual Funds of PBD. This related to varying dates between 25th and 30th November 2011, all being dates prior to the death of PBD on 7th December 2011. The Respondent did not furnish particulars of bank accounts and mutual funds as of 12th July, 2012, i.e., the date of the filing of the 1st Disclosure Affidavit. No bank statements or statements of Mutual Funds were provided. Exhibits A and B of the 1st Disclosure Affidavit were merely typed statements prepared by the Respondent himself with no supporting documents.

69 Paragraphs 3 (iii) and 3 (iv) of the 1st Disclosure Affidavit dated 12th July 2012 referred to a bank account opened by the Respondent in the name of 'Estate of Mr. Purvez Burjor Dalal' in Kotak Mahindra Bank. No bank statements or details of balances standing in the account were provided, not even in the Reply dated 16th April 2013 to Contempt Petition No.4 of 2012.

70 The Administrator obtained bank statements of one undisclosed account opened by the Respondent in the name of the estate of PBD directly from Kotak Mahindra Bank and forwarded the statements to the parties by his letter dated 12th December 2014. The Administrator also obtained bank statements of the accounts of PBD in HSBC directly from HSBC and forwarded them to the parties by his letter dated 29th April 2015. Similarly, the undisclosed Yes Bank Estate Account Statements were forthcoming only much later. The Administrator was required to approach the Bank directly in view of the Respondent's refusal to provide the bank statements.

71 Counsel for the Respondent submitted that the alleged Will dated 8th September 2011 of the Deceased, annexed to the Respondent's probate Petition, disclosed the list of bank accounts (savings, current, and fixed deposits) and disclosed the mutual fund statements and that the statement

prepared, though prepared by the Respondent, was identical to HSBC's statements, HSBC being the asset manager. However, clearly the same had no Folio Numbers, and there is no mention of HSBC being the asset manager.

72 Counsel for the Respondent Shri Bachawat further submitted that the 1st Disclosure Affidavit dated 12th July 2012 disclosed the Kotak Mahindra Bank Estate Account along with its Account Number. This overlooks the fact that while the number of the Kotak Mahindra Bank was disclosed in the 1st Disclosure Affidavit only in an attempt to explain where the funds from the sale of the flat at Al Karim had gone, no bank statements of the same were provided. The bank statements were obtained only later by the Administrator and were received as late as 21st November 2014, around 18 months after the Order dated 21st June 2012. These bank statements of the Kotak Mahindra Bank account were not disclosed by the Respondent, clearly only to prevent the inevitable trail of inquiry of entries which eventually exposed the Amoha Traders' transactions and the alleged donation to dubious Avabai Trust.

Shares

73 The list of shares mentioned at paragraph 2(g) of the 1st Disclosure Affidavit was incomplete. Item 13 of the list in the Schedule to the

Respondent's Probate Petition No.5 of 2012, viz., shares of DCM Shriram Industries Ltd. was omitted there from without any explanation.

74 No Demat Account statements nor supporting documents with regard to the shares have been produced. No particulars of any dividends, interest or bonus shares or other accretions to the bank accounts/mutual funds/shares or any debits to the bank accounts or sale of mutual funds or shares on and after November 2011 have been furnished. This, despite the fact that Order of the Learned Single Judge dated 24th December 2013 recorded the statement of Counsel for the Respondent that the Respondent *"is however willing to submit relevant D-MAT account statement if required. There is no variation in shares."*

75 At the hearing, Counsel for the Respondent, Shri Bachawat, for the first time attempted to justify failure to disclose DEMAT statements by alleging that there were simply no DEMAT account and that the observation in the Order dated 24th December 2013 and the Contempt arose from an erroneous statement made by Counsel for the Respondent. Learned Counsel for the Respondent contended across the bar that the statement, as recorded had been made *"overzealously"*. On it being pointed out that this was not to be found anywhere on record, the Respondent filed affidavit dated 30th

September 2016 during the hearing of the Petitions, and put forth this entirely new case regarding the DEMAT accounts; stating , *inter-alia*, that he was “*not aware of any Demat Account of the deceased or of a share therein. I have not operated any Demat Account of the deceased*”; “*that any reference to any demat statement of the deceased by me is incorrect*” and that it was an “*inadvertent, unintentional error on my part which seems to have led to the incorrect impression that the deceased had a Demat Account or that statements of such Demat account were available with me.*”

These are unacceptable, belated excuses.

76 This new case of the Respondent was contrary to his earlier denial in his Affidavit in Reply dated 24th April 2013 to Contempt Petition No.4 of 2012, wherein he had stated on oath that “*..... deny any deliberate or incomplete disclosure on my part in providing a list of shares or bank accounts or mutual funds or investments or at all*”.

77 This new case of the Respondent was also contrary to his previous stand set out in the Affidavit in Reply, filed as late as 25th July 2016 in Contempt Petition No. 5 of 2015 and filed by the Respondent’s present Advocate, wherein the existence of the DEMAT account of the Deceased has been re-asserted by stating that “*I was advised and I bona fide believed*

that disclosure of the balance in the bank accounts and Demat accounts at the time of the death of the said deceased would be sufficient compliance with of prayer clause (c)(ii)...” (emphasis supplied).

78 Counsel Shri Bachawat then submitted that all shares were only held in physical form, and that it was no party’s claim that there were some other shares in DEMAT. These are all after thoughts. In fact this Court suggested to the counsel for the Respondent to file an affidavit of the Respondent that he had not instructed the earlier advocate to make a statement to the Court that the Respondent will provide demat account details as well. This was declined, and the counsel muttered something that was inaudible.

Government Sector Investments

79 The Respondent’s purported Will dated 8th September 2011 stated that PBD had investments in the Government Sector. The Respondent claims that after making inquiries and investigations, he has discovered that there are, in fact, no such investments in the Government Sector. He states that he had reproduced the Affidavit of Assets filed by the deceased in his probate Petition for his brother’s Will, and papers in the probate Petition filed by the deceased with regard to his brother’s Will are annexed. This contention is belied by the alleged will dated 8th September 2011, clause 4

whereof makes specific reference to “government securities”.

80 Further, the Learned Single Judge by Order dated 24th December 2013 held that the Respondent had suppressed the bank accounts, mutual funds, shares and Government Sector investments as well as Demat account statements, supporting documents regarding the shares in the disclosure Affidavit, recovery of dividends, interest or bonus shares or other accretions to the bank account / mutual funds / shares or any debits to the bank account or sales of mutual funds or shares on and after November 2011.

RESPONDENT’S NON-DISCLOSURES REVEALED FROM THE KOTAK MAHINDRA BANK STATEMENTS OBTAINED BY THE ADMINISTRATOR ON 12TH DECEMBER 2014 :

Non-Disclosure/Suppression of YES Bank Estate Account

81 The 1st Affidavit of Disclosure dated 12th July, 2012 did not disclose any YES Bank account in the name of the “Estate of Mr. Purvez Dalal”. When later obtained by the Administrator, the Statements had an entry dated 26th June 2012 showing transfer of Rs.50,000.00/- “TO CLG YES BANK A C ESTATE OF MR PURV”.

82 After the existence of the YES Bank account became known, despite

the Administrator calling upon the Respondent to furnish the details of the said YES Bank Estate Account, the Respondent declined to do so. At the Meeting No.1 held before the Administrator on 19th September, 2014, the Administrator directed all the parties concerned to handover possession of the properties of PBD in their possession, including movables and all documents in respect of the Estate and details of Bank Accounts of PBD, as directed by the Judgment and Order dated 24th December, 2013. However, even at that stage, the Respondent paid no heed to the said directions.

83 After receipt of letter dated 12th December 2014 enclosing the statements received from Kotak Mahindra Bank and discovery of the existence of the said Yes Bank account therefrom, the Administrator then specifically called upon the Respondent to furnish particulars of the said YES Bank Estate Account, and an explanation of each of the entries in the bank statement of Kotak Mahindra Bank (including by the Administrator's letters dated 26th December, 2014, 10th April, 2015 and at the meeting of 17th April, 2015). These directions were again not complied with by the Respondent.

84 In these circumstances, by an Order dated 29th June, 2015 passed in Administrator's Report No.1 of 2014 this Court directed the Respondent to

make a disclosure on affidavit that “*must contain all particulars*”, and the statement of Advocate for the Respondent was recorded that “*every piece of the estate of the deceased shall be disclosed in full measure in the disclosure affidavit, which she now proposes to file*”.

85 The Respondent then filed another Affidavit dated 27th July 2015 (the 2nd Disclosure Affidavit), now disclosing only some of the statements of YES Bank Ltd. In the meeting on 4th September, 2015, the Petitioners pointed out in a Note handed over to the Administrator and parties, *inter-alia*, that there were several lacunae in the said statements. It was only thereafter by a letter dated 30th August 2016 that the balance Yes Bank Statements were furnished by the Respondents as directed by a further Order dated 20th August 2016 of this Court.

86 The explanation sought to be provided by the Respondent is that he simply over looked the YES Bank account. The Respondent claims as under:

(I) ‘*It came to my knowledge later that after more than a month of applying for the account and handing over the cheque dated 25th May 2012 [wrongly 2011], YES Bank had presented the cheque for encashment sometime on or about 28 June 2012*’ [wrongly 2011] ; (II) That the Disclosure Affidavit

was made on 12 July 2012 in “hot haste”; (III) That at the time of filing the Affidavit of Disclosure dated 12 July 2012 he was not aware that YES Bank had opened the account; (IV) He claims he “duly disclosed” the YES Bank account statements, which he had not until specifically ordered and that he does not have any statements apart from those which have been annexed to his affidavit dated 27th July 2015; (V) That the 1st statement of YES Bank is for the period 28th June 2012 to 30 June 2012 which he provided, that he has not received any other statements and therefore could not disclose the same and that he has not carried out any transaction in this account.

87 This “defence” of the Respondent cannot be accepted. The Kotak Mahindra Bank Account Opening Form clearly discloses that the Respondent received daily SMS updates regarding the account. Thus, he would have learnt about the transfer of funds to the Yes Bank Accounts on the very day that the funds were credited thereto from the Kotak Mahindra Bank Accounts. There is no explanation why opening the second estate account with YES Bank was at all necessary, since there already existed an Estate Account in Kotak Mahindra Bank since February 2012. The Kotak Mahindra Bank Account Opening Form shows that the Respondent was to be sent daily SMS updates. He would have learnt of the YES Bank’s entry well prior to filing the first disclosure affidavit dated 12th July 2012.

88 Thus, the following have been breached (i) the Order dated 21st June, 2012, particularly directions as per prayers (c)(i) and (ii) of the Notice of Motion No. 138 of 2012 by refusing to disclose even the existence of the said YES Bank Estate Account opened by him in the name of the Estate of the Deceased in his Disclosure Affidavit dated 12 July 2012.; (ii) paragraph 82 (ii) of the Judgment and Order dated 24th December 2013; and (iii) paragraphs 6 and 7 of Order dated 29th June, 2015.

OPERATION OF KOTAK MAHINDRA BANK ACCOUNT IN BREACH OF ORDER DATED 21ST JUNE, 2012 :

89 The Order of 21st June 2012 also injuncts the Respondent from:

“(accessing), occupying, receiving any benefit from, alienating, selling, transferring, encumbering, (dealing with,) disposing of, parting with possession of, inducting any persons into, or creating any third party rights or interests in or over the assets forming a part of the estate of the deceased (including the movable and immovable properties set forth in the Schedule at Exhibit 'D' to the present Suit, as well as the Schedule at Exhibit 'C' to Testamentary Suit No. 25 of 2012), or any part thereof;”

From the Kotak Mahindra Bank Statements, it does appear that the Respondent operated the said Kotak Mahindra Bank Estate Account, acting contrary to and in breach of the Order of injunction dated 21st June, 2012.

90 In his Affidavit in Reply, the Respondent pleaded “bona fide mistake”

and “oversight” and tendered an unconditional apology. He claimed that after the Order, he made the withdrawal of Rs.4300 in cash on 28th June 2012, as it was urgently required to obtain certified copies of Petition No.341 of 2012, and was paid to his erstwhile lawyer/s, and that he issued 2 cheques to the BMC. The repeated justification of alleged “oversight” and “mistake” is not acceptable and is inconsistent with his case that it was Amoha Traders who were financing the estate by loans. No leave of the Court was sought before the withdrawal, nor was the Court informed subsequently of such withdrawal. No explanation is even attempted for the other withdrawals/ transfers made in breach of the Order of injunction.

SUPPRESSION OF RESPONDENT’S DEALINGS FROM THE DATE OF THE DEATH (7TH DECEMBER 2011) TILL THE DATE OF THE OPENING OF THE KOTAK MAHINDRA BANK ACCOUNT (15TH FEBRUARY 2012):

91 PBD expired on 7th December, 2011. The Kotak Mahindra Bank Estate account was opened on 15th February, 2012. It is obvious that the Respondent received and expended the funds of the Estate for a period of over two months prior to the opening of the said account but has not accounted for such receipts/payments or his dealings therewith. No particulars regarding these receipts/payments nor his dealings therewith for the said period have been disclosed.

92 In his Affidavit in Reply, the Respondent stated: “... *I have not received any monies on account of the estate between 7 December 2011 and 15 February 2012. I may have received some dividend warrants / interest cheques in favour of the said deceased which I have now been advised to hand over to the Administrator and I am taking necessary steps in this regard*”. The Reply shows that the Respondent continues to play games with the Court by stating he “*may*” have received dividend warrants interest cheques which he has “*now*” been advised to hand over to the administrator. No explanation is forthcoming for having retained amounts in breach of the Court Orders. To aggravate the situation, even at this stage, the Respondent states that he is still taking steps to hand over the same to the Administrator, not that he has handed over the same.

93 The Reply further stated that the Respondent had duly disclosed (in the 1st Disclosure Affidavit dated 12th July 2012) that he received rents in the sum of Rs.1456/- from tenant Ratna, and Rs.132/- from Merchant Footwear. These monies, it is now claimed, were utilized for the purposes of maintenance, cleaning and other petty expenses incurred towards Modern Flats. It is said that hence they were not deposited in the Kotak Mahindra Bank or Yes Bank estate accounts. It is for the first time in this Affidavit that the Respondent claimed that such monies were utilized for maintenance,

cleaning and other petty expenses incurred towards ‘Modern Flats’ and that it was for this reason that these amounts were not deposited in either of the bank accounts of the estate. This claim indicates that the Respondent was receiving various amounts in cash on behalf of the estate but failed to deposit them in the known and disclosed bank accounts of the estate.

CASE LAW

94 In support of the Petitioners’ case, the Petitioners cited the following judgments:

(i) ***Delhi Development Authority v. Skipper Construction & Anr.***¹. This was a case where the defence of “legal opinion” (Para 60) and “apology” (Para 67) was sought to be raised and were rejected.

(ii) ***Cipla Ltd. v. Krishna D. Rana***². On similar facts, this Hon’ble Court held that the Respondent was guilty of non-disclosure under Order XXI, Rule 41 of the Code of Civil Procedure, since, despite repeated opportunity, the Respondent had repeatedly abused the liberty granted by the Court and deliberately failed to comply with Orders of disclosure. Imprisonment was Ordered.

1 (1995) 3 SCC 507, (Para 60, 66-71)

2 Judgment dated 25th August 2016 and 31st August 2016 in Chamber Summons No. 735 of 2013 in Summary Suit No.475 of 2010.

(iii) **Patel R. Dhulabhai v. Patel C. Dhulabhai**³. Despite apology, willful and deliberate disobedience calls for a serious view to ensure proper administration of justice. Imprisonment was Ordered.

95 Counsel, Shri Bachawat, for the Respondent relied on **State of Maharashtra v. Mahboob S. Allibhoy & Anr.**⁴, **Supreme Court Bar Association v. Union of India & Anr.**⁵ and **R. N. Dey & Ors. v. Bhagyabati Pramanik & Ors.**⁶ to argue that in proceedings in contempt jurisdiction, the Petitioners have no role to play as the matter is between the Court and the alleged Contemnor only.

Undoubtedly, in my view also, this is the position in law, but the Petitioners have a role, albeit limited, to place the correct and complete facts before this Court, which is all that the Petitioners have done.

96 Counsel for the Respondent thereafter relied on **Pushpaben & Anr. v. Narandas V. Badiani & Anr.**⁷, **Bigyan Kumar & Ors. v. Union of India & Ors.**⁸, **Suresh Chandra Poddar v. Dhani Ram & Ors.**⁹, **The Judge, II Labour Court, Thane vs. R. S. Pande & Ors.**¹⁰, **District Sessions Judge,**

3 (2008) 14 SCC 561 (Para 56, 60-75)

4 (1996) 4 SCC 411

5 (1998) 4 SCC 409

6 (2000) 4 SCC 400

7 (2003) 3 SCC 513

8 (1988) 3 SCC 603

9 (2002) 1 SCC 766

10 1998 Crimes (HC) 504

Aurangabad v. Deelip Balaram Bedekar & Anr.*¹¹** and ***Union of India & Ors. vs. Satish Chandra Sharma¹² to submit that even in cases where contempt has been held to be committed and an unconditional apology has been tendered, a fine and not imprisonment is the norm.

97 The Respondent's case with regard to apology has already been dealt with adequately herein-above. It must be noted, the present Petitions are a case of repeated and persistent contumacious conduct in spite of numerous opportunities being granted by the Court.

98 Counsel for the Respondent also relied on ***D. S. Poonia v. Yumnam Dimbajit Singh & Anr.***¹³ and ***S. S. Roy v. State of Orissa & Ors.***¹⁴ to point out that errors in judgment or wrong statements made with anxiety to protect themselves cannot be held to be contempt. ***Chhotu Ram v. Urvashi Gulati & Anr.***¹⁵ and ***Jhareswar Prasad Paul & Anr. v. Tarak Nath Ganguly & Ors.***¹⁶ are relied on to impress upon the Court the standard of proof required in cases of contempt.

11 2001 0 Cr.LJ 392

12 (1980) 2 SCC 144

13 (2003) 3 SCC 513

14 AIR 1960 SC 190

15 (2001) 7 SCC 530

16 (2002) 5 SCC 352

99 In light of the facts set out herein-above, the above judgments have no application whatsoever.

100 The contempt jurisdiction is primarily to ensure compliance of the Court's orders and in case of willful disobedience or willful failure thereof to punish the contemnor. The discretion given to the Court in its contempt jurisdiction is for the maintenance of the Court's dignity and majesty of law. ***[European Investment Limited Vs. Triumph International Finance India Limited and others¹⁷]***.

101 In every case, a party may simply not take steps to comply with the order or may give an impression of steps being taken, like it has been done in this case, or will simply keep quite. It is for that party to take all possible steps to ensure prompt compliance of the Court's order and in that regard to disclose what steps have been taken to comply with the order with facts and figures duly supported by materials on record. Failure in that regard would warrant conclusion about the willful default in compliance with the order. It should be remembered that when a party in whose favour an order has been made approaches the Court to punish the disobedience of that order, he merely brings to the notice of the Court the objectionable conduct of the

17 2004(6) Bom. C.R. 356

party disobeying the order and seeks action against that party for committing contempt of Court. Contempt is a matter between the Court and the alleged contemnor and is not affected in any manner by the rights and obligations of the parties to the litigation *inter-se*. In a given case a person may have violated the directions of the Court by not depositing the amount as directed which would mean he has committed breach of the order. He may, however, explain that all his bank accounts have been attached by some party or he has no money to pay. That is why we have to see whether there was a willful disobedience. If the stand is not that he has not been able to comply with the orders of the Courts due to various factors, certainly it would amount to interference with due course of justice. The onus, therefore, is on the alleged contemnor to set forth these facts. But in this case it is not the case of the Respondent that he is unable to comply with the orders of the Court. As mentioned earlier, while dealing with the broad heads of contempt as contended by the Petitioners, the Respondent has not even given any explanation as to why he did not comply with the Court's directions. The conduct of the Respondent with his contradictory stand in the affidavits filed actually makes a mockery of the judicial process. His conduct extends beyond the parties to the action and affects the interest of the public in the administration of justice. His conduct is specifically intended to impede and prejudice the administration of justice. Judiciary is

the bedrock and hand maid of orderly life and civilized society. If the people could lose faith in justice imparted by this Court or disobey orders of this Court, woe to be to orderly life. The fragment of civilized society would get broken up and crumble down. In ***M/s. Sciemed Overseas Inc. V/s. BOC India Ltd. & Ors.***¹⁸, the Apex Court has lamented about the unhealthy trend in filing of affidavits which are not truthful. Para 2 of the said judgment reads as under :-

“2 A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This ' is illustrative of the malaise that is slowly but surely creeping in. This 'trend' is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair.”

102 The Respondent knew all the time that he was making contradictory statement before the Court in the form of affidavits and in effect was making a mockery of the judicial process. The opportunity given to file further affidavit was misused and abused. The conduct of the Respondent was contemptuous because he could not care. His demeanor has been that he could make false statements, give undertakings to the Court and breach them and it would have no consequences. The action of the Respondent has been deliberate, willful and purposely done with a view to completely

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mislead this Court and delay the taking over of all the assets/estates of PBD by the administrator. By making false statement on oath, knowing it to be false statement, the Respondent has interfered with the administration of justice. In my view, if this conduct of the Respondent is not dealt with firmly, that may result in scandalizing the institution and lowering its dignity in the eyes of the public.

103 The introduction of the Contempt of Courts Act 1971 in the Statute book has been for the purpose of securing feeling of confidence of the people in general for true and proper administration of justice in the country. It is settled law that contempt of Court is an offence of a criminal character and the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt. It would be too hazardous to sentence on exercise of contempt jurisdiction on mere probabilities. In the present case the orders passed by this Court on 21th June 2012, 24th December 2013 and 29th June 2015 are each directing the Respondent to make full and complete disclosure of the assets belonging to PBD and his dealings therewith. There is no ambiguity in the three orders passed by this Court of which the Respondent is charged with contempt. The Respondent has filed 8 affidavits, including 3 of disclosure, from time

to time in these 3 Contempt Petitions and the fact that so many affidavits of disclosure have to be filed, itself shows that the Respondent was being economical with truth. The affidavits have also set up contradictory stories. This further shows that the conclusions and the sentence given below is not on mere probabilities. The breach has also been established beyond all reasonable doubt.

104 The Respondent declined to tender any apology in the affidavits filed to Contempt Petition Nos.4 of 2012 and 2 of 2014 and has filed a belated apology in his reply to the last Contempt Petition No.5 of 2014. Such an apology is insincere and an attempt to relieve the Respondent of his contemptuous conduct.

105 In the circumstances, considering the facts and circumstances of the case, the Respondent is held to be guilty of contempt of Court for willful disobedience of the directions and orders passed by this Court on 21th June 2012, 24th December 2013 and 29th June 2015, each directing the Respondent to make full and complete disclosure of the assets belonging to the estate of PBD and his dealings therewith.

106 I sentence the Respondent to undergo simple imprisonment of three months and to pay fine of Rs.2000/- (Rupees Two Thousand only). In default of payment of fine, the contemnor shall further undergo simple imprisonment for one month. The payment of fine shall be made within one month from today.

107 All three Petitions stand disposed.

108 At the request of Shri Kamran Shaikh, counsel for the Respondent, the sentence of imprisonment is stayed by a period of four weeks.

(K.R. SHRIRAM, J.)