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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 723/2016 & CM Nos.27001-27003/2016**

SHAKUNTALA DEVI & ANR Petitioner
Through Mr.K.Datta.Mr.Ashish Verma,
Mr.Rahul Malhotra and Mr.Shantanu Parashar,
Advocates

versus

VINOD KUMAR DAYAL & ANR Respondents
Through Mr.Amjet Andlay, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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28.02.2017

CM No.27002/2016

Exemption allowed, subject to all just exceptions.

CM(M) 723/2016 & CM Nos.27001/2016 &27003/2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 8.4.2016 passed by the trial court by which two applications one filed by the petitioner under section 151 CPC and second filed by the respondent under Order 39 Rule 1, 2 and 7 of CPC were disposed of.

2. The petitioners have filed the suit for partition, rendition of accounts and permanent injunction in respect of two properties being Shanker Terrace bearing Municipal No.720, Ward No.II near Fountain Chandni Chowk, Delhi (old) now known as 1937-39, Shanker Terrace, near Fountain Chandni

Chowk, Delhi and House bearing No.756 in Haveli JugalKishore, Chandni Chowk, Delhi (old) now known as 1876,Haveli Jugal Kishore, Chandni Chowk, Delhi claiming 1/4th share in the said property. In addition a decree of rendition of HUF Accounts such as bank accounts, shares, Fixed Deposits, mutual funds, cash etc. operated by respondent No.1 as Karta of HUF have also been sought. Petitioner No.1 is the mother while petitioner No.2 and respondents No.1 and 2 are her children.

3. For the purpose of these applications, the controversy centres around the bank account of the HUF which includes Account No.98784 with Punjab National Bank, Account No.3008 with UCO Bank. Third account on which there is a controversy is bank account No. 3023 with UCO Bank. As per the petitioners the said account is a personal account of petitioner No.1 the mother. As per respondent No.1 the account is part of the HUF accounts.

4. Another aspect of the matter is the medical expenses of the petitioner No.1 who is said to be above 95 years of age. It has been urged by the petitioners that she needs assistance of one nurse round the clock i.e. two nurses in shifts of 12 hours each and also requires expenses for medication and other medical needs.

5. By the impugned order the trial court directed that the medical expenses of petitioner No.1 will be borne by the account No.3008 with UCO Bank or with Bank Account No.98784 with Punjab National Bank. Direction was also passed that rest of the movable assets including the amount in the aforesaid bank accounts and FDRs will be preserved till disposal of the present suit.

6. I have heard learned counsel for the parties. Learned counsel appearing for the petitioner has two grievances. Firstly, he submits that a

fixed amount should be released every month irrespective of the medical expenses of petitioner No.1 for smooth facilitation of the medical requirements of petitioner No.1. He submits that as per the practice both the brothers, namely, petitioner No.2 and respondent No.1 are joint signatory to the accounts and invariably there is a hold up on release of funds which are released for medical expenses of petitioner No.1. He further submits that apart from this fixed sum, in case of any emergent requirement, the same should also be made available to petitioner No.1. He secondly submits that the admitted ground is that the account No.3023 with UCO Bank is the personal account of petitioner No.1. He relies on the written statement filed by respondent No.1. He submits that the account being a personal account is not a subject matter of the present partition suit and cannot be subject matter of any interim orders.

7. Learned counsel for respondent No.1 has submitted that as far as the medical expenses are concerned, he has no difficulty in making payment for the mother petitioner No.1. However, he submits that there is a strong suspicion that money which is being withdrawn on account of alleged expenses of the mother are actually being used by petitioner No.2. Hence, he submits that in case appropriate bills/invoices are given all money required for the medical expenses of petitioner No.1 would be released immediately. He, however, denies that the account No.3023 with UCO Bank is a personal account of petitioner No.1. He relies upon a communication of the bank which states that the account is a joint account in the name of petitioner No.1, 2 and respondent No.1. He also submits that the Fixed Deposits to the tune of Rs.30 lacs were lying which have been allegedly taken out by petitioner No.1. He submits that no details are being given of the said money

that has been taken out. He submits that as this fund was available the same could easily have been utilised for medical expenses of petitioner No.1. He submits that respondent No.1 suspects that the money has been utilised by petitioner No.2.

8. As far as the status of account No.3023 with UCO Bank is concerned, it is a disputed question of fact. It would be improper to adjudicate the status of the account, i.e. whether it is a HUF account or the personal account of petitioner NO.1 based on the submissions being made before this court. *De hors* this controversy, there can be no dispute that medical expenses are required for the petitioner No.1. She is about 95 years of age. It is a little disturbing to note the fight going on between the two sons regarding the medical expenses for their own mother. Both parties agree that the medical expenses have to be taken care of but are quarrelling over the funds. In any case the admitted fact is that a rent of approximately Rs.1,50,000/-is received each month. This figure was admitted by respondent No.1 in the court. Admittedly, as per the plaint the share of petitioner No.1 would be Rs.37,500/-. Accordingly, let a sum of Rs.35,000/- be released each month for the medical expenses of petitioner No.1 from the admitted HUF Accounts, i.e. account No.3008 with UCO Bank or account No.98784 from Punjab National Bank. Any expenses above the same may also be released by petitioner No.2 and respondent No.1 subject to production of appropriate bills/invoices in this regard. The impugned order to that extent stands modified.

9. As far as the stay on movable assets is concerned, it is agreed by the parties that Account No. 3023 with UCO Bank would be operated by joint signatures of petitioner No.2 and respondent No.1. This would ensure that

no amount is usurped by any of the parties wrongly at least for the future. The impugned order is modified to that extent.

10. As far as the past utilisation of funds is concerned, the petitioner No.1 may file an affidavit on record stating the usage of the FDR amounts.

11. All payments released to petitioner No.1 pursuant to this order are subject to final adjustments at the time of final adjudication of the suit including adjustments as contemplated under Order 20 Rule 18 CPC. The only reason for this court to interfere in the impugned order passed by the trial court is to protect the medical needs of petitioner No.1.

12. At this stage, the learned counsel for the respondent states that there are some past expenditures which are pending. Counsel for respondent No.1 fairly states that they have no objection on releasing the payment for the medical treatment of the mother provided necessary bills are forwarded.

13. In view of the above, the present petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

FEBRUARY 28, 2017

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