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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7222 OF 2015

- | | | |
|--|---|--------------------|
| 1. Dr. Subhada Mithilesh |] | |
| age: adult, Occn. Service |] | |
| r/at 8212, Ridgelea street |] | |
| Dallas TX 75209 |] | |
| USA. |] | |
| |] | |
| 2. Mrs. Vibha Jaysinghe |] | |
| Age: adult, Occn. Service |] | |
| r/at 7389, Murrayfield Dr.Worthington |] | |
| OH 43085 USA |] | <u>Petitioners</u> |
| Both petitioners through their Power of |] | Original |
| Attorney Holder |] | Petitioners |
| Mr. Ashish Kher, |] | |
| age: adult, Occn. Service |] | |
| r/at:A.-6/502, Ganga Satelite |] | |
| Opp. Raheja Garden, Wanwadi |] | |
| Pune |] | |
| Through his Power of Attorney Holder |] | |
| Dinesh Dhundiraj Barve |] | |
| age: adult,Occn. Retd. |] | |
| r/at : 417, Narayan Peth, Yogendra Society |] | |
| Pune 411 030 |] | |

V/s.

- | | | |
|------------------------------------|---|--|
| 1. Mr. Prabhakar Deolankar |] | |
| age: 85 years, Occn. Retired |] | |
| [Dr. Rajendra Prabhakar Deolankar) |] | |
| age: adult, Occn.Service |] | |
| |] | |
| 2. Smt. Radhika Rajendra Deolankar |] | |
| age: adult, Occn. Service. |] | |
| |] | |
| 3. Ms. Oonnatie Rajendra Deolankar |] | |
| age: adult, Occn. Service. |] | |

4. Smt. Sarita Shivram Lohokare
age: adult, Occn. Housewife.

respondent Nos. 1 to 4 r/at Sukhashanti
flat No.2, 37, Laxmi Park Colony
Navi Peth, Pune 411 030

5. Dr. Ravindra Lohokare
age: adult, Occn. Service.

6. Mrs. Rama Ravindra Lohokare
age: adult, Occn. Service.

7. Ms.Kalyani Ravindra Lohokate
age: adult, Occn. Service.

8. Master Devdatta Ravindra Lohokare
age: Minor, Occn. Student.
Through his father and natural guardian
Ravindra Lohokare.

9. Dr. Mithilesh Kumar
age: adult, Occn. Service.

10. Mr. Sheil Mithilesh Kumar
age: adult, Occn. Service.

Respondent Nos 5 to 9 r/at Madhumati Bldg
Deccan Gymekhana, Pune 411 004.

11. Dr. Neil Mithilesh Kumar
age: adult, Occn. Service.
res.No.10 and 12 r/at 8212 Ridgelea street
Dallas, TX 75209, USA

12. Ms. Samantha Jayasinghe
age:adult,Occn. Student
r/at 7389 Murrayfield, Dr. Worthington
OH 43085 USA

13. Dr. Mrs. Jayashree Atul Boralkar
age: adult, Occn. Doctor

14. Dr. Atul Boralkar
age: adult, Occn. Doctor
15. Master Saurabh Atul Borulkar
age: adult, occn.Student
res. Nos. 14 to 16 r/at : 768,/24 Rohit Apts.
Deccan Gymkhana, Pune 411 004.
16. Mrs. Madhuri alias Prachi Priyadarshi
Pandhare, age: adult, Occn.Housewife.
17. Mr. Priyadarshi Pandhare
age: adult, Occn. Service
18. Mr. Ameya Priyadarshi Pandhare
age: adult, Occn. Student.
19. Ms. Ojasi Priyadarshi Pandhare,
age: adult, Occn. Student.
res. Nos 17 to 20 r/at
Row house No.1, Gajanan Soc. (B)
Paramhansnagar Kothrud, Pune 411 038
20. Dr. Chandrashekhar Phansalkar
age: adult, Occn.Doctor
21. Dr. Mrs. Ruchira Chandrashekhar
Phansalkar, age: adult, Occn. Doctor.
22. Ms. Sukanya Chandrashekhar Phansalkar
age: adult, Occn. Student
res. No. 21 to 23 r/at
A1/33 Dahanukar Residency
Dahanukar Society, Kothrud
Pune 411 020.
23. Mrs. Bhanumati Prabhakar Deolankar
age: adult, Occn.Housewife
24. Mr. Sanjay Prabhakar Deolankar
Age: adult,Occn. Service

Respondents.
Original
Respondents.

25. Mrs. Neeta (Archana) Sanjay Deolankar
age: adult, Occn. Service.
26. Mr. Manas Sanjay Deolankar,
Age: adult, Occn. Student.
res Nos 24 to 27 R/at: 127, Yorkshire,
Drive Morganville
NJ 07751 USA.
27. Mr. Charudatta Prabhakar Deolankar
age: adult, Occn. Service
28. Mrs. Anjali Dharudatta Deolankar
age: adult, Occn. Housewife.
29. Ms. Juhi Charudatta Deolankar
age: adult, Occn. Student
30. Master Kunal Charudatta Deolankar
Minor through his Father and natural
guardian Charudatta Prabhakar Deolankar,
age: adult, Occn. Service.
Res. Nos. 28 to 31 r/at: 230 Yellowknife Road
Morgnaville, NJ 07751, USA
31. Mr. Ravi Shyam Chandolkar
age: adult, Occn. Service,
r/at : Survey No.16, Plot No.3/A.
Swapnamandir Society, Patwardhan Baag
Eranwane, Pune 411 004.
32. Mrs. Abha Dastane - Rao
age: adult, years, Occn. Consultant
33. Mrs. Sucheta Narayan Dastane
Age: 77 years approx. occn. Retired
Res.No.33 and r/at 248, Travis Trail,
Maminnville, TN.37110
USA
34. Maharashtra Executor and Trustee
Company Pvt. Ltd.
Add. L st floro, 568, Kesariwada

Narayan Peth, Pune 411 030.

Mr. Hemant Ghadigaonkar, for the Petitioners.
Mr. S. N. Chandrachood, for the
Respondent No.1.
Mr. Pramod J. Pawar, for Respondent No.34.
Mrs. Abha Dastane Rao -Respondent No.32
in person.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

CLOSED FOR ORDER ON : 22nd JANUARY, 2018.

JUDGMENT PRONOUNCED ON: 2nd FEBRUARY, 2018.

JUDGMENT :

1] Heard learned counsel for the petitioners, learned counsel for respondent No.1, learned counsel for respondent No.34 and respondent No.32 in person.

2] Rule.

3] Rule is made returnable forthwith with the consent of parties to this petition.

4] By this Writ Petition, filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 04.01.2014, passed below Exh.276, by 8th Joint Civil Judge Senior Division, Pune, in Misc. Application No.21 of 2008.

5] Application at Exh.276 was filed by the petitioners herein, under Section 247 of the Indian Succession Act, 1925, for appointment of Administrator *pedente lite*, in the Miscellaneous Civil Application No. 21 of 2008, which was filed for revocation of the will dated 26th April, 2006, executed by the father of the petitioners namely Dr. N.G. Dastane. Respondent No.32 is the daughter and respondent No.33 is the wife of late Dr. Dastane and both these respondents are supporting the case of the petitioners.

6] At the outset itself, it has to be stated that this writ petition has a chequered history of litigation. Several proceedings instituted by the petitioners and respondent No.32 are pending in the Court. Some of them are disposed of. It appears that to some extent, this Writ Petition has also become infructuous in view of subsequent orders passed by this Court, in other proceedings after filing of this writ petition. However, as learned counsel for petitioners and respondent No.32 are still keen to argue this writ petition on merits, I have heard them at length. I have also perused the written Notes of Arguments filed by Respondent Nos. 32 and 33 and the earlier orders passed in these proceedings and on the basis of the same, at the stage of admission itself, this writ petition is being decided finally.

7] The facts of the writ petition are to the effect that Dr. N. G. Dastane, died on 26.04.2006, leaving behind him the petitioners and respondent No.32 as his daughters, and respondent No.33 his wife. He has also left behind his last Will dated 25.4.2006, which was executed just a day before his death. By the said will, he has appointed respondent No.1 as the Executor of the will. Respondent No.1 had filed Misc. Application No.359 of 2006, before the Court of Civil Judge Senior Division, Pune, for obtaining the probate of the said will and on the basis of consent given by the petitioners and respondent Nos. 32 and 33, the members of 'Dastane Family', the Civil Court, allowed the said Application on 18.6.2007, directing respondent No.1 to furnish Indemnity Bond and Surety Bond of like amounts. Accordingly respondent No.1 asked the petitioners and respondent Nos.32 and 33 to furnish surety bonds which they refused to give, as according to them, they being from the family of late Dastane and as his legal heirs, they were not required to give the same. The surety bonds were, however, furnished by respondent No.2 and 6 and after obtaining necessary order from the Court, the probate was granted in the name of respondent No.1 on 14.12.2007.

8] At this stage, it may be stated that on 12.6.2006 itself, respondent No.1 had, with the consent of the petitioners and

respondent Nos.32 and 33 viz., the members of Dastane Family, executed a Power of Attorney in favour of respondent No.34 METCO, for advice and assistance in the execution of Dr. Dastane's Will. Thereafter on 18.6.2007, in pursuance of the probate granted on 18.6.2007, the immovable assets were distributed in terms of the Will. On 13th July, 2007 the jewellery from Dr. Dastane's Locker was given to respondent No.33 Sucheta as widow. Except for cash or monetary bequests, all other bequests under the Will, namely the jewellery and immovable properties, were distributed and received in accordance with the terms of that will.

9] As per the case of petitioners, respondent No.32 by her various emails requested respondent No.1 to inform her and all the legal heirs of his further actions regarding distribution of the remaining assets under the Will. However, respondent No.1 failed to give proper response and by email dated 30th December, 2007, for the first time stated that some amount, out of residue estate, should be kept in Charitable Trust for protection of the third party claim.

10] According to petitioners, due to this changed behaviour of respondent No.1, they started to re-examine the entire process of the will and obtaining of the probate and then for the first time noted that

the previous will dated 21.03.2006, which has a mention in the present will dated 25.4.2006, bears different signatures of the same attesting witness, namely, Dhananjay Shrotri. It was also noticed that the hand-writing of both the Wills was of different persons. Hence the petitioner Nos. 1 and 2 filed Misc. Application No.21 of 2008, for revocation of the Probate granted on 14.12.2007 in respect of the will dated 25.4.2006. In the said application, they also moved an application for relief of interim injunction vide Exh.5, restraining respondent No.1 from acting in pursuance of the probate. On that application ad-interim injunction was granted on 5.1.2008.

11] On 29th November 2012, the ad-interim injunction granted on 5.1.2008, came to be vacated by the Court of Civil Judge S.D. As a result thereof, the cheques for the cash bequests were issued to the beneficiaries by mid December, 2012, as per the probate. The petitioners, Respondent No.32 and 33 were also asked to execute the surety bonds, which they refused to do so. The petitioners then moved an application before the Court to continue the previous order of ad-interim injunction and said application came to be allowed on 21st December, 2012. However, in the meanwhile cheques issued to the be beneficiaries were already being processed through clearing and these cheques, in fact were cleared on 24th December,

9/28

2012.

12] The petitioners herein then filed M.A.No.225 of 2013 under Section 192 of the Indian Succession Act on 16th January, 2013, for relief against wrongful possession and for protection of property of deceased. That application was rejected on 12th August, 2013. Writ Petition preferred by the petitioners against the said order bearing No.11594 of 2013 also came to be dismissed on 4th February, 2014.

13] As per case of petitioners, thereafter on the inspection of the probate proceedings, some time in October, 2013, respondent No.32 Abha noticed several illegalities and hence on 16th November, 2013, petitioners filed present application at Exh.276 before the trial Court in Misc. Application No.21 of 2008, seeking removal of respondent No.1 as Executor and for the appointment of respondent No.32 as Administrator *pendente lite*.

14] On 17th November 2013, respondent No.32 also filed M.A.No.1187 of 2013, for revocation of probate, alongwith application for condonation of delay. As that application was rejected on 20th March, 2014, she filed Review Application No.362 of 2014. It was also

rejected on 24th July, 2014. She then filed Writ Petition No.2730 of 2015. It was allowed on 10th February, 2015.

15] In the meanwhile on 20th January, 2015, respondent No.32 Abha filed Misc. Petition (L) No.98 of 2015. On 14th September, 2015, she also resurrected her revocation action in the District Court by filing M.A.No.893 of 2015, following the order in her Writ Petition No.2730 of 2015.

16] As stated above, the petitioners have filed this application at Exh.276 before the trial Court in January 2013, mainly on the ground that though respondent Nos. 1 and 34 were aware of the fact that after rejection of the Application for interim injunction at Exh.5 in M.A.No.21 of 2008, the petitioners had preferred Misc. Civil Appeal No.519 of 2012, against the said order and order of ad-interim injunction was passed therein on 21.12.2012, they have made payments to the alleged beneficiaries from the estate of the deceased. It was submitted that in the absence of Letter of Administration in the name of respondent No.34, he has no locus standi to bequeath the said assets. It was alleged that respondent Nos. 1 and 34 were aware that the matter was hotly contested by the petitioners and appeal was likely to be filed against rejection of

application for interim injunction at Exh.5. Hence, they should have, in good conscious, not distributed the bequests to the alleged beneficiaries, at least, before the appeal period was over. This conduct on their part was only with an intention to have benefit of the Will, causing severe damage to the estate of the deceased. The allegation was also made that respondent Nos. 1 and 34 are not acting in proper manner so as to get the maximum benefit for the estate. They have not submitted to the Court the accounts of the amount lying in their custody, as required by law. The petitioners also recently came to know that amount lying in the hands of respondent No.34 is considerably lower than reasonably expected. Moreover, the amounts which were required to be invested for long term were invested for very short period. Therefore, the said amounts could not fetch the interest which ought to have been fetched.

17] The contention was also raised that respondent Nos. 1 or respondent No.34 did not make efforts to pay income tax for the earnings of the years between 2005 to 2007, though it was taxable, therefore, substantial penalty is likely to be charged now. The allegation was also made that respondent No.34 has withdrawn substantial amount towards it's charges, which are beyond the limit, to which respondent No.1 did not raise any objection.

18] On all these grounds, it was submitted by the petitioners that the conduct of respondent No.1 and 34 shows that they have no intention to maintain the properties and by their act the property of the deceased has got severely damaged. Hence it is not advisable to keep custody of the said property in their hands. Therefore, request was made that, as the petitioners as well as respondent Nos. 32 and 33 being the legal heirs of the deceased, are entitled to the entire assets of the deceased, in the absence of probate of Will or at least entitled to all the residual estate, even if the will or probate prevails, it has become necessary and just to appoint respondent No.32, who is in the know-how of the matter since beginning and frequently visited India to take follow up and ready and willing to act as Administrator, be appointed as Administrator *pendente lite*.

19] This application came to be resisted by the respondent No.1 and 34 and the trial Court after hearing their submissions was pleased to reject the said application by holding that all the allegations which are raised by the petitioners in this application were previously also raised, and considered by the various Courts and they are found to be without substance. It was further held that respondent No.1 is appointed as an Executor of the Will as per the Probate and hence it would not be proper to remove him and to

appoint respondent No.32 as Administrator *pendente lite*.

20] This order of trial Court is challenged in this writ petition.

21] At the cost of repetition, I have to state that this writ petition has now become more or less infructuous, in view of subsequent orders passed in various proceedings taken by the petitioners and respondent No.32. The main proceeding which totally frustrates the present writ petition, is Misc. Petition (L) No.98 of 2015 filed by respondent Nos. 32 and 33 in this Court, under Section 301 of the Indian Succession Act 1925, for removal of respondent No.1 as the Executor of the Will. All these allegations about non payment of income tax for the years 2005 to 2007, not rendering of the accounts or bequeathing the assets after vacation of order of ad-interim injunction, were also raised in the said Writ Petition. The said petition was contested by both parties and thereafter vide detailed order dated 17th February, 2016, the said petition came to be dismissed by this Court (Coram: G.S. Patel, J.).

22] The judgment of the said petition is produced in this petition and perusal of the same is more than sufficient to disclose that each and every contention raised by these petitioners in this

application filed before trial Court for appointment of the Administrator *pendente lite* was repeated in the said petition also and this Court has dealt with the same in detail. In paragraph No.23 of the judgment, the various acts of negligence or dereliction or illegality alleged on the part of respondent No.1 for his removal were reproduced by this Court as under:-

“23. Against each of these headings, there are various allegations made and cross -references to the pleadings and the documents. Again, in fairness, Mr. Damle agreed that not all of these allegations stood on an equal footing. Some, he submitted, were indeed serious and, on instructions, and as an Officer of the Court, he focussed on these. In his submission, the following constituted acts of negligence or dereliction or illegality sufficient to warrant Deolankar's removal:

- a) The appointment of METCO;
- b) Default in tax liabilities;
- c) Not letting out the Parvati property to earn rent;
- d) Making a unilateral distribution of the monetary bequest between the time the ad-interim order was vacated on 29th November 2012 and before it was reinstated on 21st December 2012;
- e) Recouping litigation costs from the estate;
- f) Keeping out of the estate funds or investments of which Deolankar's own sons were nominees.”

Thereafter from paragraph No.24 onwards, this Court has

considered in detail each of these allegation and held that the petitioners therein, who are respondent Nos. 32 and 33 to this petition, have failed to prove those allegations.

23] This Court also found and held in paragraph No.32 of the judgment that respondent No.1 was appointed as sole Executor by the deceased in his Will dated 21.3.2006 also, which is sufficient to indicate that it is respondent No.1, in whom Dr. Dastane had full faith and confidence. It was, therefore, held that even if the contentions of the petitioners that Will dated 26th April 2006, is to be revoked, in that case also as the earlier Will dated 21st March, 2006 will prevail, then it necessarily means that respondent No.1 should continue to function as Executor.

24] This Court has then also considered the fact that as of general rule, the Court will respect the person's appointment as executor for it shows that the testator reposed in that person a special confidence. The Court must give full weight to that expression of confidence. In the present case, that "expression of confidence" is seen not once, but twice as it is to be found in the previous Will too, which the Dastane Family seeks to revive by dislodging the present Will. Hence unless gross misconduct, serious mismanagement, misuse or misapplication of the estate are shown,

the Court will not readily remove an executor who has been appointed in the probate. It was held that there must be clear evidence that the executor's continuance qua executor is detrimental or injurious to the estate and will frustrate the Will, with the administration of which he is charged in law and by the testamentary writing. Minor lapses, errors of judgments or less than perfect handling of matters is not sufficient reason to substitute the testator's expression of confidence.

25] Thus, after considering each and every allegations and finding no substance therein, this Court has refused the prayer for removal of respondent No.1 as Executor of the Will. In paragraph Nos.38 to 40, it was categorically held as follows :-

“38. In an application such as this, the Court must, taking an overall view of the matter, assess whether a case has been made out showing that the executor has obstructed the administration of the estate; has made claims adverse to that estate; is shown to guilty of gross mismanagement and not minor lapses; and whether he has, in sum and substance, perverted the disposition of the estate in accordance with the terms of the Will. I do not think any of this can be said of Deolankar. The delay in distribution is demonstrably due to the constant and incessant litigation by the Dastane Family in piling one application on top of another, and in making all kinds

of allegations with what appears to be the scantiest regard for matters of record. There is material misdirection in regard to the appointment of METCO. There is an almost complete disavowal or, at any rate, a slurring over of the fact that the Petitioners have received benefit under the Will. There are the critical omissions in the pleadings about previous and pending litigations. There is a constant repetition that cash disbursements were made after the ad-interim order was vacated 'despite a stay order' an allegation that is demonstrably incorrect. There is the complete suppression of the fact that one of the Petitioners herself agreed that tax was not to be paid for a particular assessment year, despite which allegations of non payment of tax for that very year are now made.

39. There is also the question of the consequences of Dastane Family's own actions. This is not immaterial or inconsequential. First, at least one, if not both of the Petitioners have received some testamentary bequests. I must note also that apart from anything else the 1st petitioner, Abha, has also received benefits under the Will that now she contests and the Executor of which, Deolankar, she wants to be removed. One of the bequests in the Will is that Abha be provided with expenses for her travel to and from the United States. These expenses have admittedly been provided to her periodically. None of these expenses could possibly been reimbursed but for the provisions in the Will. This is not a matter that can be overlooked. None of this can be disputed. I do not see how the Petitioners can assail either the probated Will or seek removal of an executor appointed under that Will without first committing to bringing back all those

testamentary benefits. If the present Will fails, there is no assurance that the previous one will succeed. If that happens, and the devolution is ultimately on intestacy, neither of the Petitioners can claim exclusivity to the legacies that they have taken. Second, I have earlier noted that there are inherent conflicts in their stands. There seems to be at least one pending application for distribution of the monetary legacies (Writ Petition No.3768 of 2015) and its underlying applications: but without an insistence on an indemnity or a discharge. That application posits an acceptance of the current Will and, therefore, an acceptance of Deolankar as the executor. Finally, there is the question with which I began, viz, the conflict between the prayers in this Miscellaneous Application and the application for revocation. These are not just inconsistent. They are mutually destructive.

40. I have not been able to find any substance in the allegations against Deolankar, certainly none as would warrant his removal. The Petition is dismissed. There will be no order as to costs”.

26] Thus, there is now a judicial finding recorded by this Court itself in respect of the allegations, on the basis of which, this application for appointment of Respondent No.32 as Administrator *pendente lite*, was filed before trial Court. It may be true that respondent No.32 has preferred Appeal No.332 of 2016 against the said judgment and that appeal is admitted by the Division Bench of this Court on 26.11.2016. But as on today, the findings recorded by

the learned Single Judge, are neither disturbed nor set aside and otherwise also those findings are based on material on record. Now this Court cannot re-enter into the same allegations for appointment of Administrator *pendente lite* because the appointment of Administrator *pendente lite* means removal of the Executor, who is already appointed in the Will and that is as good as giving contrary judicial finding to the one recorded in the above said order by this Court.

27] Moreover, Administrator *pendente lite* can be appointed only when there is no-one to look after the property for its administration pending any suit. Here in the case already the Executor is appointed in the Will and this Court has refused to revoke his appointment, and it is held that he is discharging his duties properly and there is no substance in the allegations made against him by the petitioners. In such circumstances, it has to be held that the challenge made to the order passed by the trial Court in this writ petition even in the light of this subsequent order passed by this Court, has become infructuous.

28] The submission of respondent No.32, who is appearing in person is that if respondent Nos. 1 and 35 have acted contrary to the

estate of the deceased and as a result if they have lost confidence of the beneficiaries, then they cannot be allowed to be continued as Executors. In this respect reliance is placed by her on the judgment of this Court, in **Mukesh Ramanlal Gokal and anr -vs- Ashok Jagjivanram Gokal and others** in Misc. Petition No.66 of 2013, decided under Section 301 of the Indian Succession Act on 11.10.2013; wherein it was observed that,

“if the beneficiaries have lost confidence in the Executors, such Executors or trustees cannot be allowed to foist themselves upon the beneficiaries /legatees to act on their behalf as executors and trustees”

29] It is submitted that the conduct of the Executor must be for the welfare of the beneficiaries and to advance the aims and objectives of the trust. If the conduct of the Executor is not so conducive to the welfare of the beneficiaries, then the power of removal must be exercised.

30] Here in the case it is urged that the petitioners and respondent Nos. 32 and 33, who are beneficiaries and legatees of the deceased and who are also from the family of the deceased, have lost their confidence in respondent Nos. 1 and 35 the Executors, hence the trial Court should have appointed respondent No.32 as

Administrator *pendente lite*, even if such order would have amounted to removal of the Executor. However, in my considered opinion, it becomes difficult to accept this submission because mere contention that beneficiaries have lost confidence in the Executor is not sufficient for removal of the Executor and for appointment of Administrator *pendente lite*. There must be some material on record to substantiate such allegation of loss of confidence. It is already held that on the basis of such allegations, the Executor Respondent No.1, cannot be removed who is enjoying trust and confidence of the deceased as he is appointed in the will itself.

31] It may also be stated that subsequent to the order passed by this Court on 17.2.2016, in the above said proceeding, there are some other orders passed by this Court also, which have direct bearing on the outcome of this Writ Petition. The important order, having bearing on this petition is the one dated 28th September 2016 passed in Writ Petition No.3768 of 2015, preferred by the Petitioners herein, challenging the order passed by Civil Judge Senior Division dated 24.7.2014, and raising the same grievance that respondent No.1, who was appointed as Executor of the property did not give proper response and was avoiding to work as Executor. The application was also taken out in the said proceeding directing

respondent Nos. 1 to 35 to hand over the properties. As the said application was rejected by an order dated 24.07.2014 by trial Court, the Writ Petition bearing No.3768 of 2015 was preferred. When the this Writ Petition came to up on board on 29.08.2016, the following order was passed by this Court (Coram: N.M. Jamdar, J.)

“Learned counsel for respondent No.1 states that the executor is ready and willing to hand over the entire bequeath to the Petitioners and respondent Nos.33 and 34, subject to furnishing the security bonds/surety pending the disposal of the main matter. He submits that, furnishing of such security will be without prejudice to the rights and contentions of the parties.

2. Learned counsel for the Petitioners as well as Respondent Nos. 33 and 34 seek time to consider the proposal given by the learned counsel for Respondent No.1.

3. Stand over to 21st September, 2016 under the caption, “for Directions”.

32] As learned counsel for petitioners as well as respondent Nos.33 and 34 had taken time to consider the said proposal, matter was adjourned to 21st September, 2014 and thereafter on 28th September, 2016, learned counsel for respondent No.1 made a statement that respondent No.1 is willing to hand over bequeath and residue on condition that the petitioners and respondent No.33 were

agreeable to the suggestion and hence it was held that:-

“since the Executor is ready and willing to hand over entire bequeath and residue subject to furnishing bonds and security, the impugned order, does not survive which did not permit the petitioners to take this course of action”.

33] Thereafter in view of the correspondence exchanged between the petitioners and respondent No.1 which was placed on record, learned counsel for respondent No.1 expressed an apprehension that being Executor, respondent No.1 may not be able to carry out certain functions and he may have limitations, however, the learned Civil Judge can pass appropriate orders. Thereafter there was a consensus between the parties as regards handing over the bequeath and residue and the only question then remained before this Court was, as to working out the modalities.

34] Accordingly, in paragraph No.7 of the said order, this Court (Coram: N.M. Jamdar, J.) observed that:-

“Respondent No.1 will hand over the entire bequeath and the residue to the custody of the learned Civil Judge and learned Judge will thereafter hand over the same to the petitioners and respondent Nos.33 and 34, upon such security /surety bond as the learned Civil Judge thinks appropriate”.

35] In view of this arrangement, the said writ petition was disposed of directing respondent No.1 to hand over entire bequeath and residue to the custody of the learned Civil Judge within a period of three weeks and thereafter the learned Civil Judge was directed to take a decision and fix the modalities within three weeks thereafter.

36] It is pertinent to note that in view of this order, the learned Civil Judge Senior Division Pune, has vide order dated 9.11.2016, passed in Misc. Application No.21 of 2008, fixed the modalities, distributing and handing over custody of the bequeath and residue and those modalities are mentioned in paragraph Nos.9 (a) to (y) of his order. It was also directed that these modalities shall be followed by the parties strictly.

37] Thus, now whatever was to be done about the estate or bequeath, is already done and nothing remains, as such in the writ petition for appointment of Administrator *pendente lite*. If the bequeath and residue is already disposed of, no question arises of appointing any Administrator *pendente lite*.

38] The submission advanced by respondent No.32 is that despite such order passed by this Court and the modalities worked

out by the trial Court, petitioners and respondent Nos. 32 and 33 the legal heirs are not able to receive anything but just 1% of the amounts, presently due to them and the estate continues to remain in the hands of Nazir since last one and half years and hence needs an Administrator. However, in this respect appropriate remedy for the petitioners and respondent No.32 would be to approach the trial Court for implementation of those modalities, but on the count of non-execution of those modalities, they cannot seek appointment of Administrator *pendente lite*. Moreover, the written notes of arguments and submission of respondent No.32 shows that she has already filed application for review of the said order for relaxation of the condition to furnish solvency or surety bonds as per order dated 8.1.2018. Accordingly said condition is also relaxed by the trial Court. In my considered opinion, therefore, there remains no substance in this contention also.

39] At this stage, it may also be stated that respondent No.32 herein, has also filed Application at Exh.37 in M.A.No.21 of 2008 for her appointment as Administrator *pendente lite* under Section 247 of the Indian Succession Act, 1925. It was filed again on the same allegations as discussed above. Her application was also considered by the trial Court at length and thereafter by detailed order, the said

application also came to be rejected on 11.10.2017, categorically observing in paragraph No.13 that,

“unless and until at the first instance, Executor is removed by the competent Court under the law under Section 301 of the Act, the question of appointing Administrator *pendente lite* would not arise. However, in the present case, as application for removal of the Executor is already dismissed by this Court in Miscellaneous Petition (L) No.98 of 2015 by order dated 17th February, 2016, such prayer for appointment of respondent No.32 as Administrator *pendente lite* cannot be considered”.

40] Thus, it can be seen that petitioners and respondent No.32 have kept on filing separate proceedings seeking the same relief and at each and every available forum and they have become unsuccessful. This conduct on their part shows that they do not want respondent No.1 the Executor or respondent No.34 METCO to function smoothly and then they are raising grievances about their non functioning and praying for their removal. As their grievances are dealt with at length and found to be without substance and as even the residue and bequeath is also distributed, as per the modalities worked out by the trial Court in Misc. Application No.21 of 2008, therefore, there is absolutely nothing remains in this petition.

41] This petition has, thus, not only becomes infructuous but it is also without merits, and hence, this Court has to dismiss the same.

42] Writ Petition accordingly stands dismissed.

43] Rule discharged in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]