Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
COURT RECEIVER'S REPORT NO. 26 OF 2018
IN
TESTAMENTARY SUIT NO. 70 OF 1999
WITH
COURT RECEIVER'S REPORT NO. 71 OF 2018

Shahjehan A Modegarian ...Plaintiff
Versus
Marzaben A Khairabadi & Anr ...Defendants

Ms Dipti Vora, *i/b Jehangir Gullabbhai & Billimoria & Daruwalla, for the Plaintiff.*
Ms Devyani G Waanjara, *i/b BR Oza & Co., for the Defendants.*
Mr PG Lad *for MHADA.*
Ms KY Ambekar, *Ist Assistant to the Court Receiver, is present.*

CORAM: G.S. PATEL, J
DATED: 23rd March 2018

PC:-

1. It is utterly extraordinary that despite the express order of 12th August 2005,[1] one that has attained finality, and which said that the Defendants were to pay all necessary outgoings, taxes, and statutory dues, the Defendants have failed to do so. They never challenged this order. They never sought a variation. They sought

1 In Notice of Motion No.36 of 2005.

no modification, nor any recall. They simply disobeyed the order and did not pay. Here is the order (SU Kamdar J), in its entirety:

> It is an admitted position that in respect of property described in prayer clause (a) of motion, parties are not collecting rent. In view thereof, it is necessary that proper mechanism be involved. Both the parties agree that Receiver shall collect the rent and maintain the said property. Receiver's charges will be initially borne by the respondents and the same will be subject to final account. **Respondents will be directed to attorn the tenants in their favour and collect rent and pay all necessary outgoings and statutory charges.** Motion disposed of with the aforesaid order. No order as to costs.

(*Emphasis added*)

2. Today, it is in all seriousness urged by Ms Wanjaara that the Defendants, who challenge the Will propounded in the Testamentary Suit, should not be required to pay anything; and that it is the Executor propounding the Will who should pay these dues out of his personal funds, and later recover them from estate funds if the suit is decreed. This argument wholly overlooks the fact that the order of 12th August 2005 was passed after the Defendants were heard and in the presence of their Counsel. The Defendants were not aggrieved by this. If the Plaintiff is an Executor and not a beneficiary, he can hardly be expected to continually bear rising costs, outgoings, statutory dues and taxes for the potential future benefits of these Defendants, who are content to sit on their hands, quite unwilling to accept any responsibility. The order of 12th August 2005 was obviously intended to protect the contesting

Defendants, but it also put them to terms. The Defendants cannot have privileges without responsibility.

3. Mr Lad on behalf of MHADA, who is present pursuant to a notice issued to that Authority, states that an architect has been appointed and repairs and reconstruction work will soon commence as the building is very dilapidated. The statement is noted.

4. Given the approach of the Defendants, whose case is to challenge the Will and therefore to claim the property as on intestacy, and since they are unwilling to abide by the order of 12th August 2005, the Court Receiver will stand discharged without passing accounts. The costs, charges and expenses of the Court Receiver will be deducted from the amount in the hands of the Court Receiver and the remaining amount will be transferred to the Prothonotary and Senior Master, to the credit of the Suit. The Prothonotary and Senior Master will invest the amount transferred in a fixed deposit in any nationalised bank for a period of one year and then for like periods thereafter.

5. Liberty to MHADA to take steps in accordance with law to recover the amount due to it.

6. Both Receiver's Reports are disposed of in these terms.

(G. S. PATEL, J)