Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

Smita Ajay Yeole ...Plaintiff

versus

Milind Vishwanath Chalke & Anr ...Defendants

WITH

NOTICE OF MOTION NO. 8 OF 2018

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

WITH

NOTICE OF MOTION NO. 80 OF 2018

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

WITH

NOTICE OF MOTION NO. 74 OF 2018

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

WITH

CONTEMPT PETITION (L) NO. 3 OF 2017

IN

NOTICE OF MOTION NO. 153 OF 2016

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

WITH

CONTEMPT PETITION (L) NO. 4 OF 2017

IN

NOTICE OF MOTION NO. 153 OF 2016

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

WITH

CONTEMPT PETITION (L) NO. 5 OF 2017

IN

NOTICE OF MOTION NO. 153 OF 2016

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

WITH

CONTEMPT PETITION (L) NO. 6 OF 2017

IN

NOTICE OF MOTION NO. 153 OF 2016

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

WITH

NOTICE OF MOTION (L) NO. 123 OF 2018

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

Mr JP Sen, Senior Advocate, *with Ms Spenta Havewala, i/b M/s Federal & Rashmikant, for the Plaintiff.*
Mr Durgesh Kulkarni, *for Defendant No.1.*
Mr AM Saraogi, *with Prajot Jaggi, for Defendant No.2.*

CORAM: G.S. PATEL, J
DATED: 3rd July 2018

PC:-

1. The dispute is between the heirs of the deceased, Vishwanath Shankar Chalke ("**Vishwanath**"). The Plaintiff is his daughter. The 1st Defendant is his son. The 2nd Defendant is his widow.

2. For some time now there have been in place several orders regarding the functioning and operations of a company known as Oriental Weaving and Processing Mills Private Limited ("**Oriental**"). A committee of administrators has been appointed. **Vishwanath** had a 40.40% shareholding (2,70,413 equity shares) in Oriental. He also had several other assets: mutual funds, insurance policies, shares in other firms, and rights in various immovable properties.

3. Both sides have suggested that as the first step towards a possible settlement of all disputes, the various items in the estate should be valued. At this stage, this is on a *without prejudice* basis as none have yet entered into any discussions regarding any division of the assets in this estate, or any mutual adjustments *inter se*. I believe that no settlement or adjustment is possible unless there is a reasonably accurate valuation of the estate.

4. Mr Sen for the Plaintiff has tendered a list of the assets comprising the estate. I will take this on record and marked it 'L1' for identification with today's date. There is a corresponding list tendered by Mr Saraogi for 2nd Defendant. This is taken on record and marked 'L2' for identification with today's date.

5. Not all the assets need an independent valuation; that is to say, some assets are such that their value at any given time can be readily determined without consulting an outside valuer. For instance, Vishwanath's investments in mutual funds need not be taken to a separate valuation. Their net asset value will be reflected in the latest account statements. Similarly, insurance policies have a known value and should present no difficulty. Vishwanath held shares in Arvind Mills Limited, a traded scrip. Again, the valuation of his 1000 shares in that company can be easily ascertained.

6. What remains are the valuations of Vishwanath's shareholding in Oriental, his shareholding in another company called Spice Island Apparels Ltd ("**Spice Island**") and his half share in a partnership firm known as M/s VK Industry ("**VK Industry**"). These three entities, Oriental, Spice Island and VK Industry themselves hold some immovable properties. Consequently, for a meaningful valuation of Vishwanath's interest or shareholdings or partnership share in these three entities, those immovable properties will also need to be valued.

7. The next segment comprises the five immovable properties at Jogeshwari, Sanpada, Pune (two properties) and Ratnagiri. There is some controversy between the two sides as to Vishwanath's exact share in one or more of these immovable properties. There is, however, no dispute that it is these five immovable properties that required to be valued.

8. For the purposes of the valuation, I will appoint a valuer from the panel of valuers maintained by the Court Receiver to value the five immovable properties listed at Sr. Nos. D1, D2, D3, D4 and D5 of the list "L1". The valuation at this stage is not to be of any fractional holding, but of the entire property on an as is where is basis. Any existing occupancies are not to be taken into account in the course of this valuation. The valuer will also value the immovable properties held by the companies at Sr Nos C1, C3 and C4, namely Oriental, Spice Island and VK Industry from List L1. The Plaintiff will furnish a list of the immovable properties held by these three entities as maintained in the books of accounts of these three entities to the valuer.

9. This valuation is to be conducted by M/s AT & TS Associates, on the panel of this Court.

10. Given the extent of the exercise and the fact that not all the properties are in Mumbai, I will allow the valuers two months' time and request that a valuation report be made ready on or before 3rd September 2018.

11. In the meantime, I will request M/s Bansi S. Mehta and Co, a firm of highly reputed Chartered Accountants that enjoys the utmost confidence, to begin determining the breakup value of the equity shares of Oriental and Spice Island, and of valuing the partnership firm VK Industry, and Vishwanath's share in that firm. Mr Sen suggested the appointment of M/s Bansi S. Mehta & Co, and later confirmed that it could take up the assignment. The Defendants have no objection and support the suggestion.

12. It seems to me self-evident that an accurate valuation of these commercial entities (and of Vishwanath's share in the firm) will depend on the valuations returned for the immovable properties held by those entities. The final valuation of the commercial entities will therefore necessarily have to follow the completion of the exercise regarding the property valuation. Yet, there are other aspects of the commercial enterprises/entities that also need to be assessed and valued and M/s Bansi S Mehta & Co may commence that part of the work at the soonest, examining the books of account of Oriental, Spice Island and VK Industry and looking at all other commercial documents. Their valuation reports will, of course, explain in brief their methodology and the valuation methods adopted.

13. In order to shorten the time frames, I would request M/s AT & TS Associates to start their assignment by first valuing the immovable properties held by Oriental, Spice Island and VK Industry. After that is completed, they may then take up the valuations of the five properties in which Vishwanath individually had a share, or which he held solely (Sr Nos. D1 to D5 of List "L1").

14. None of these reports are at this stage to be disclosed to either side without a specific order of the Court. M/s AT & TS Associates will submit their valuations of the commercial entities' immovable properties in a sealed cover, and I will then separately forward these reports to M/s Bansi S Mehta & Co for inclusion or incorporation in their valuations of the commercial entities.

15. The Advocates for the Plaintiff will forward ordinary copies of this order to M/s Bansi S Mehta & Co and to M/s AT & TS Associates, with a copy to the Advocates for the Defendants. Both sides will furnish M/s Bansi S Mehta & Co and to M/s AT & TS Associates with copies of such documents and records as are needed. There is to be no withholding of information from either consultant.

16. Parties agree that the costs of both valuations will be met out of the funds available in the estate. This is noted.

17. For the present list the matter for directions on 25th July 2018. By that date, both consultants should indicate in correspondence to advocates for all parties the estimate time they will need to complete their respective assignments.

18. In order to ensure that the process is not complicated, both sides agree that there will be no third party rights created, encumbrances or charges made, nor there will be any dispositions of any of the immovable properties or any parting with possession without prior leave of the Court obtained after sufficient notice to the other side. Mr Sen submits that there may be a requirement to raise capital for Oriental by creating a security over some of its immovable properties. At present, that is without particulars. Leave to the Plaintiff to make an appropriate application for permission to proceed with any such transaction once there are more details known and available.

19. As to the 2nd Defendant's complaint that her driver's salary is not being paid by Oriental, Mr Sen makes a statement on instructions that 2nd Defendant, the mother of the Plaintiff and 1st Defendant, will have the services of a driver and his salary will be paid by the company in question. However, the company is not required to pay for either the driver or the fuel expenses for the car that is being used by 1st Defendant.

NOTICE OF MOTION NO. 74 OF 2018

IN

TESTAMENTARY SUIT NO. 175 OF 2013

IN

TESTAMENTARY PETITION NO. 551 OF 2013

20. By consent the Motion is made absolute in terms of prayer clause (a).

(G. S. PATEL, J)