

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 305 OF 2017
IN
TESTAMENTARY SUIT NO. 29 OF 2017
IN
TESTAMENTARY PETITION NO. 1377 OF 2016**

Sebastina Paul D'souza	...Applicant
<i>In the matter between</i>	
Noel Paul D'souza	...Plaintiff
<i>Versus</i>	
Sebastina Paul D'souza and Ors	...Defendants

Mr JS Kini, *i/b Suresh Dubey, for the Plaintiff.*
Ms Nikita Pawar, *with Ms Jalpa Pithadia, i/b SI Joshi and Company, for the Applicant in Notice of Motion No. 305 of 2017 and Defendants Nos. 1 and 2 in Testamentary Suit No. 29 of 2017.*
Mr Nilesh Dhote, *for Defendant No.3.*

CORAM: G.S. PATEL, J
DATED: 18th April 2018

PC:-

1. The Suit was settled yesterday by filing the Consent Terms in Testamentary Suit No. 29 of 2017. The typographical error in paragraph 1 of yesterday's order which mentions as Testamentary

Petition No. 29 of 2017 will be corrected to read Testamentary Suit No. 29 of 2017.

2. The result of the Consent Terms is that Testamentary Petition No. 1343 of 2017 succeeds without contest and Letters for Administration with Will annexed are to be issued in that Petition.

3. Testamentary Suit No. 29 of 2017 is accordingly dismissed and will not survive. Its corresponding Testamentary Petition No. 1377 of 2016 is also therefore dismissed.

4. The Consent Terms require that a particular flat, Flat No. 103, O wing, Shell Towers Cooperative Housing Society Limited, Shell Colony, Sahakar Nagar I, Chembur, Mumbai – 400 071 (**“The Shell Towers flat”**) and which was allotted in lieu of old Flat No.160, Building No.14, Madhukunj Cooperative Housing Society Limited, Shell Colony, Sahakar Nagar I, Chember, Mumbai 400 071 is to be sold along with its associated parking space, it being accepted that it belongs jointly to the Plaintiff Noel Paul D’souza (**“Noel”**) and 1st Defendant Sebastina Paul D’souza (**“Sebastina”**). The Consent Terms request that a Court Commissioner be appointed to take possession of this flat from the Developer, 3rd Defendant, Godrej Landmark Redevelopers Private Limited (**“Godrej Landmark Redevelopers”**) and that thereafter the flat be put to sale.

5. The agreement between the Godrej Landmark Redevelopers and the Society is, as is usual in such cases, that possession must be

delivered first to the Society and that the Society in turn will deliver possession of the Flat in question to the allottee. While the existence of this agreement or arrangement is acknowledged, in the facts and circumstances of the case, giving effect to it will only delay matters. Godrej Landmark Redevelopers Private Limited is before the Court as 3rd Defendant. The Society itself is before the Court as 2nd Defendant. Neither Godrej Landmark Redevelopers nor the society have any independent claim, right, title or interest in this flat. They both accept, as indeed they must, that possession of the flat is to be delivered to the allottee, which in this case would be the person found to be entitled to the estate of the deceased namely Paul Francis D'souza. In view of the understanding between the parties, what is now required is that a Court Commissioner will formally take possession from Godrej Landmark Redevelopers directly of the Shell Towers Flat No.103 and then proceed to put the flat to sale by public auction.

6. Parties are agreed that the Court Receiver should not be appointed as this might depress the sale value of the flat. I will accept this request from the parties and request Mrs Sandhya Pagedar, First Assistant to the Official Assignee (GT Hospital premises, Mumbai, Mobile No. 9920473619) to act as the Court Commissioner. Godrej Landmark Redevelopers Private Limited, the 3rd Respondent, will deliver possession of the flat to Mrs Pagedar. On behalf of Godrej Landmark Redevelopers a statement is made that project is nearing completion and the occupation certificate has been applied for and is awaited. As currently advised, that possession is expected to be delivered on 6th May 2018. I will allow for some delay in this. The 3rd Defendant will inform Mrs Pagedar

of the date when possession may be taken and a copy of this communication will be send to the Advocates for the Plaintiff and 1st Defendant.

7. Thereafter Mrs Pagedar will finalise the terms and conditions of the sale including setting the schedule and the terms regarding an earnest money deposit. The parties are agreed that it is not necessary at this stage to fix a reserve price although that may be considered if it is found that the offers are very much on the lower side. The auction process is to be completed within a period of three months. However as a matter of precaution since there is this question of ascertaining the best price Mrs Pagedar will make a report to the Court. All offers that are received pursuant to the advertisement issued will be opened in Court and the sale will be confirmed to the highest bidder by separate order of the Court made thereafter. All expenses associated with this sale including stamp duty, registration charges, costs of advertisement and the Court Commissioner's fees which will be settled later will be first deducted from the aggregate sale proceeds. The net sale proceeds will then be distributed between the Plaintiff and the 1st Defendant in equal shares as provided in the Consent Terms.

8. The amount due from the 3rd Defendant towards unpaid corpus fund, unpaid transit rent and other allowances will be paid in equal shares by the 3rd Defendant to the 1st Defendant and the Plaintiff. The 3rd Defendant will ensure that a copy of its communication and a photocopy of the instrument of payment is also forwarded to Mrs Pagedar for completeness of the record.

9. These administrative directions will suffice. Liberty to the parties to apply. Mrs Pagedar is requested to place the matter at an appropriate and convenient date after the summer vacation.
10. It is clarified that the auction that is to be conducted is of the Shell Towers flat with its associated car parking space.
11. Refund of Court fees, if any, in accordance with the Rules.

(G. S. PATEL, J)

Note: This order is modified as per order dated 20th February 2019. The corrections are shown in bold and italics.