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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L)NO.238 OF 2018

Dr.Yajnesh Mahabala Shetty ...Appellant
vs.
Asha Manohar Hegde & Ors. ...Respondents

Mr.Zubin Behram Kamadin I/b Ms Aisha Pinto for the
appellant
Mr.Sandesh Bharuch a/w Mr.Rajmani Varma a/w Purvi
Jain I/b Navdeep Vora and Associates for the
Respondent Nos.1 to 4.

CORAM : A.S.OKA, &
M.S.SONAK,JJ.
DATE : AUGUST 28, 2018

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P.C.:

1 Heard the learned counsel appearing for the appellant. The appellant is the petitioner in a Testamentary Petition. The appellant is claiming to be the Executor of the alleged last Will and Testament dated 25th February 2015 executed by his mother who died on 27th June 2016. The appellant claims that he has been appointed as the sole Executor under the said Will and that is how he has filed a Testamentary Petition which has been converted into a suit. The respondent Nos.1 to 5 are the sisters of the appellant. It is pertinent to note that the said respondents (sisters) have filed a suit for administration of estate of their mother being Suit No.83 of 2018 which is pending in

this Court. The present appellant is a party defendant to the said suit.

2 In the Testamentary suit filed by the appellant, he took out a Notice of Motion (L) No.69 of 2018. It was pointed out in the affidavit in support by the present appellant that the hotel in the name and style of "Hotel Vijay" is one of the assets of the deceased mother. The appellant claimed that the hotel is being run by him for last more than 30 years. There were various licences issued to the said hotel. The appellant claimed that he was assisting his mother in running the said hotel. The prayer made in the Notice of Motion is also founded on the claim of the appellant that he is the sole legatee of the mother of the hotel business. Prayers (a) and (b) read thus:

"(a) That this Hon'ble Court be pleased to direct the Respondent No.1 to issue license for sale of foreign liquor and Indian made foreign lisquor under the Maharashtra Prohibition Act,1949 in favour of the Plaintiff as executor of the estate of late Sarojini Mahabala Shetty by way of transposition;

(b) That this Hon'ble Court be pleased to direct the Defendants and Respondent Nos.2 and 3 to grant a no-objection in favour of the Plaintiff for obtaining the license for

sale of foreign liquor and Indian made foreign liquor under the Maharashtra Prohibition Act, 1949 as executor of the estate of late Sarojini Mahabala Shetty by transposition;"

3 By the impugned order dated 23rd March 2018, the learned Single Judge has disposed of the Notice of Motion by passing the following operative part of the order :

"4...This, in my view, is best achieved by directing the Collector, Respondent No.1 to this Notice of Motion to grant a renewal of license No.FL III License No.793 in favour of the Plaintiff Dr.Yajnesh Mahabala Shetty for use in association with the restaurant and eating house, namely, Hotel Vijay at Vishram Building, GM Road, Chembur, Mumbai 400 089.

5 However, the Plaintiff will not distribute the proceeds received from the conductors of the restaurant and eating house to any of the legatees in the Will. The Executor-Plaintiff will pay out all taxes and statutory dues to all authorities. The remaining amount will be deposited without any other deductions (i.e the only deductions are for taxes and statutory dues) every two months with the Prothonotary and Senior Master will invest the amounts when

deposited, intially for a period of one year each and then renew periodically with any nationalised bank in accordance with the usual practices of his office"

(underline added)

4 The grievance of the appellant is about the direction in paragraph 5. His submission is that the appellant ought to have been permitted to withdraw or retain the amount paid by the conductors of the business as he is associated with the business even during the life time of the mother and that after the demise of the mother, he is carrying out the business from the year 2016. His submission is that no such restraint could have been put on the appellant by directing him to deposit entire amount received from the conductor of the business. He submitted that in fact in the administration suit filed by the respondent Nos.1 to 5, a Notice of Motion is taken out in which very drastic prayers have been made including a prayer for directing the appellant to deposit the amount received from the conductor of the hotel business. He states that by the order dated 12th February 2018, the said relief has been denied to the respondent Nos.1 to 5 and therefore, the learned Single Judge ought not to have imposed the restraint which is imposed by paragraph 5 of the impugned order. He submitted that the respondent Nos.1 to 5 have not even prima facie established that the Will is bad in law or that there is something wrong with the Will.

5 We have considered the submissions. Firstly, we must note here that the prayer clause (a) of the Notice of Motion made by the petitioner seeks a direction to the Collector to transfer all the licences in respect of the hotel business in his name in his capacity as the Executor and not in his personal capacity as the alleged sole legatee or heir of the deceased mother. As the impugned order indicates, the business is being conducted not by the appellant but by the conductors of the hotel business who are named in the paragraph 3 of the impugned order.

6 We have perused the order dated 12th February 2013 in the Notice of Motion (L) No.170 of 2018 taken out by the respondent Nos.1 to 5 in their administration suit. Even according to the case of the appellant, in the said Notice of Motion, there is a prayer made by the respondent Nos.1 to 5 directing the appellant herein to deposit or pay the amount which is being paid by the conductors of the business. We find that the order dated 12th February 2018 in the said Notice of Motion taken out by the respondent Nos.1 to 5 is only an ad-interim order and in fact the said Notice of Motion is pending for hearing.

7 Considering the fact that the transfer of licence of the hotel was sought by the appellant in his name in his capacity as the Executor and

considering the pendency of the Notice of Motion (L) No.170 of 2018, we find that the learned Single Judge was right in imposing the condition which he has imposed in paragraph 5 of the impugned order.

8 The issue whether the appellant or the respondent Nos.1 to 5 are entitled to receive the amount deposited by the conductors of the business or part thereof cannot be decided finally especially when the Notice of Motion (L) 170 of 2018 is pending before the learned Single Judge.

9 Notwithstanding the impugned order, the appellant in his alleged capacity as an heir or legatee can apply for withdrawal of the amount. If such application is made in the Testamentary Suit filed by the appellant, the same will have to be naturally heard along with the Notice of Motion (L) No.170 of 2018 in the suit filed by the contesting respondents.

10 Therefore, subject to what is observed above, no case is made out for interference with the impugned order.

11 Accordingly, subject to what is observed above, appeal is dismissed.

12 It will be appropriate if the Testamentary Suit No.190 of 2017 and the Administration Suit filed by the respondent Nos.1 to 5 (Suit No.83 of 2018) are

heard together. We, therefore, direct the learned Prothonotary and Senior Master to seek appropriate directions in this behalf from the Hon'ble the Acting Chief Justice.

13 We make it clear that as the impugned order does not decide the rights between the parties, we have made no adjudication on the rights claimed by the parties. We have also made no final adjudication on the pending proceedings between the parties. Pending Notice of Motion does not survive and the same is disposed of.

(M.S.SONAK,J.)

(A.S.OKA,J.)