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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 169 OF 2017
IN
TESTAMENTARY SUIT NO. 61 OF 2017
IN
TESTAMENTARY PETITION NO. 98 OF 2016

Shalu Moti Bathija ...Applicant/ Plaintiff

Versus

Mohan T Bathija & Anr ...Defendants

And

The State Bank of Mysore ...Respondent

Mr Ravish Mishra, *i/b Vijay B Dhingreja, for the Plaintiff.*
Mr Anand Shinde, *for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 24th September 2018

PC:-

1. The Petition for Letters of Administration with Will annexed is contested. I have allowed an amendment to both the Petition and to this Motion.

2. The Motion seeks a limited relief which is to allow a debit to the account No. 540429465747 of the deceased, Jawahar Thakordas

Bathija, with the Respondent, State Bank of Mysore, Khar (W) Branch, for payment of income tax dues claimed against the estate of the deceased.

3. The first prayer is for a restraint against the Defendants from interfering with the payment of the dues. The account is already frozen. That relief will achieve no purpose. The second prayer seeks a direction against the Bank to make that payment. In the alternative, there is a prayer to permit the Petitioner to make payment of all tax dues by drawing on the account in question.

4. I am inclined to grant prayer clause (c) with a modification. The reason suggests itself. If tax dues are not paid, there will be rising penalty and interest. As it is, Mr Mishra states that the claim which was originally Rs. 15,32,620/- inclusive of interest has now mounted on account of non payment to over Rs.19 lakhs. Allowing the opposition by the Respondents, or, for that matter, allowing a delay to file a reply, will add only to this claim. I do not see why there should be a further reply. One Affidavit in Reply is already on record. A further Affidavit in Reply is sought on the ground that the original Petitioner having died and her daughter having been substituted, there will be fresh considerations. There will not.

5. The only objective so far as this Court is concerned is to preserve and protect the estate subject to the final outcome of the Petition. Indeed, it is in the Respondents' own interest to make sure that there are no overriding claims from the revenue because these will only succeeds in depleting the estate; and these claims enjoy priority. Thus, even if the Respondents succeed in their challenge to the Will being propounded, they will first have to satisfy all dues of income tax and other statutory liabilities. Being required to pay an increased tax demand does not serve their purpose whatsoever.

6. I will therefore allow the Notice of Motion in the following terms:

(a) The Petitioner is permitted to draw on Account No. 540429465747 in the name of the deceased Jawahar Thakordar Bathija with State of Bank of Mysore, Khar (West) Branch, for the purposes of paying all dues to income tax against the deceased's PAN Number.

(b) All payment will be made online or by cheque.

(c) The Respondent Bank will permit the operation of account for this purpose.

(d) The Petitioner will, after each payment, file in this Court Affidavit complete in all respects showing the amount paid and producing the necessary document evidencing payment.

7. All other rights and contentions between the parties are expressly kept open.

8. The Manager of the Respondent Bank will act on production of an authenticated copy of this order.

9. This order will continue until further orders.

10. The Notice of Motion is disposed of in these terms. No costs.

(G. S. PATEL, J)