IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1923 OF 2018

IN

SUIT (L) NO. 1079 OF 2018

Sheroo Gazdar ... Plaintiff

Vs.

Dinshaw Panthaky & Ors. ... Defendants

Mr.Karl Tamboly a/w. Ms. Niyathi Kalra, Ms. Rujuta Patil i/b. Negandhi Shah and Himayatullah for the Plaintiff.
Mr.G.G.Mogre for Defendant No.1.

CORAM : S.J.KATHAWALLA, J.

DATED : 16TH OCTOBER, 2018

P.C. :

1. The Plaintiff is an 86 year old widow. The Plaintiff's husband Sohrab Gazdar died on 24th July, 1996.

2. It is the Plaintiff's case as set out in the Plaint, that after the death of her husband, the Defendant No. 1 started helping her in transferring the estate of her late husband in her name and also helped her in managing her assets. Upon the demise of her late husband and under the guise of such help, the Defendant No. 1 obtained details of the assets owned by the Plaintiff. The Plaintiff in good faith attested her signature to various papers and documents in relation to the assets and properties of her late husband based on the assurances given to her by the Defendant No. 1.

3. According to the Plaintiff, at some stage the Defendant No. 1 started suggesting that his name be added in the ration card in respect of the Plaintiff's residence i.e. Mohamedali Rogay Apartments, Flat no. 7, 3rd floor, Thakurwad Road, Mumbai 400002 **("the said Flat")**, where she is a tenant. However, when she refused to add the name of the Defendant No. 1 in the ration card, he started forcing her and threatening her to add his name in the ration card as well as the rent receipt in respect of the said Flat. Further, in or around 2011 she discovered that the Defendant No. 1 had clandestinely included his name in the ration card in respect of the said Flat.

4. According to the Plaintiff, the Defendant No. 1 fraudulently got his name added as a joint holder in the Plaintiff's bank account, as well as her Demat Account with Defendant No. 2 i.e. Integrated Enterprises (India) Pvt. Ltd. It is her case that all the shares in the said Demat Account belong solely to her, which she has inherited from her late husband. In other words, according to her, though the name of the Defendant No.1 has been added as a joint holder in respect of her accounts i.e. her bank accounts and the Demat Account, the monies lying in the bank account and the shares lying in the Demat Account with Defendant No. 2 belong solely to her. Defendant No. 1 has not contributed and/or invested a single rupee or share and has no beneficial ownership in any of these shares or monies, which according to the Plaintiff belong exclusively to her. A list of the shares lying in the Demat Account with the Defendant No. 2, bearing Account No. 11372700, is annexed at Exhibit "E" at page 42 of the Plaint. Essentially there are three scrips lying in the Demat Account

maintained by the Plaintiff with the Defendant No. 2, being (i) 3680 shares of Hindustan Unilever Limited (ii) 11250 shares of ITC Ltd. (iii) 100 shares of Nestle India Ltd. from the NSDL Demat Account ID:11372700. The consolidated value of these shares as on 14th May, 2018, was Rs.96,78,450.50 *(Rupees Ninety Six lakhs Seventy Eight Thousand Four Hundred Fifty and fifty paise only*)

5. According to the Plaintiff upon such discovery, she turned to her relatives to help her with her affairs.

6. According to the Plaintiff, she therefore executed a Will dated 18th January, 2013 *(annexed at Exhibit B to the Plaint)* and stated therein that she had trusted the Defendant No. 1 and mentioned his name jointly and as nominee in most of her investments ; however, the Defendant No. 1 betrayed her trust and therefore she does not wish to give anything to the Defendant No. 1 ; that she made several requests to the Defendant No. 1 to cancel his name from all her investments and especially her Demat Account, and that she wishes to remove his name from all her accounts.

7. The Plaintiff has filed the present Suit on 10th August, 2018, in which she has *inter alia* prayed for a declaration that she is the sole owner in respect of the shares lying in the Demat Account with the Defendant No. 2 and that the Defendant No. 2 be directed by a mandatory order to remove the name of Defendant No. 1 in respect of her Demat Account. In the Notice of Motion originally filed by the Plaintiff, the Plaintiff sought a temporary injunction restraining the Defendant No. 1 from in any

manner dealing with *inter alia* the shares lying in the Demat Account held by the Plaintiff with the Defendant No. 2. The Plaintiff further prayed that the Defendant No. 2 must delete the name of the Defendant No. 1 in respect of the Demat Account held by the Plaintiff with the Defendant No. 2.

8. On 13th August, 2018, the Plaintiff moved for urgent ad-interim reliefs, when the following Order was passed :

> *"1. Plaintiff is an 86 years old lady, who has filed the above Suit alleging the Defendant No. 1 has cheated her and has misappropriated her funds.*
>
> *2. Defendant No. 1 is present in Court along with his Advocate. He has informed the Court that he is associated with the Plaintiff since the last more than 20 years ; he has always helped the Plaintiff and taken care of her and her movable and immovable assets ; he has not received a single naya paisa from the amounts received by her by way of sale of her shares or the dividends received on her shares ; it is the Plaintiff who has always asserted that he is like a son to her and she was desirous of giving certain shares to him and therefore she had included his name in the shares, which stood in her name ; it is incorrect to say that he has cheated the Plaintiff in any manner as alleged by her in the Plaint ; it is her other relatives, who have now come on the scene and are trying to malign him ; they have made the Plaintiff file the present Suit by brain washing her ; he is not residing with the Plaintiff and is not claiming any rights over her flat ; he has acted on the Power of Attorney executed by the Plaintiff in his favour in the year 1997 but has always done so with the intention to help / assist her and not for his benefit*

3. In view of the above allegations and counter allegations, the Plaintiff though 86 years old, shall appear before this Court on 14th August, 2018 at 10.00 a.m. in Chambers so that the Court can ascertain her say in the matter.

4. Stand over to 14th August, 2018 at 10.00 a.m. in Chambers."

9. On 14th August, 2018, I spoke to the Plaintiff as well as the Defendant No. 1, in the presence of their respective Advocates. The statements made by them are recorded in the Order dated 14th August, 2018, which Order is reproduced hereunder :

"1. Pursuant to the Order dated 13th August, 2018, the Plaintiff – Sheroo Gazdar is present before me in Chambers along with relatives Mr. Dara Rupa and Ms. Roshan Khurshed Bacha. Defendant No. 1 - Mr.Dinshaw Panthaky (Dinshaw) is also present.

2. In response to the questions put to the Plaintiff by me, she has answered as follows :

> *"My date of birth is 10th August, 1930 ; I am therefore 86 years old ; myself and my husband had no children ; my husband passed away in July-1996 ; I have always stayed alone after the demise of my husband and continue to stay alone ; the mother of Dinshaw had got friendly with me prior to his birth and therefore I was present at the time when Dinshaw was born ; Dinshaw was regularly coming to my house ; Dinshaw took charge of my bank accounts and shares in various companies by stating that he knows every thing ; Dinshaw has sold my shares and has not provided the accounts ; Dinshaw got his name added in my ration card and in my bank account with ICICI Bank and*

also in my bank locker with Bank of India ; I have sold all my jewellery lying in my bank locker since I was short of funds ; Dinshaw also made me prepare a Will, the contents of which I am not aware and I also do not remember who were the witnesses to the said Will ; I have subsequently made a Will ; I want to form a trust and give my entire estate for being used towards charitable causes ; Dinshaw completely stopped visiting me since the year 2005 and has retained my important documents which he is not returning ; Mr.Dara Rupa is my relative who was earlier staying abroad and is now in India and he has helped me in filing this Suit against Dinshaw.

3. *The Defendant - Dinshaw Panthaky has submitted as follows :*

All the allegations made by the Plaintiff against me are incorrect ; I was not only taking care of the Plaintiff but was also taking care of her husband including the period during which her husband was in hospital ; I have not misappropriated a single rupee received from the sale of shares or from the funds lying in her bank accounts ; the Plaintiff has included / added my name along with her name in the shares, ration card, bank accounts and bank locker of her own free will and consent and nothing is done under coercion or undue influence ; it is true that I stopped visiting the Plaintiff after 2005 but I was in constant touch with her over the phone ; I have all the documents including the emails exchanged with the brokers with regard to the sale of the shares ; the Will was prepared by her in the year 1997 after consulting Mr.K.C.Vazifdar, Advocate ; at that point of time the Plaintiff had only made a passing reference that she had a relative / cousin by the name - Dara Rupa ; in fact, the Plaintiff had told *me that she dislikes Ms.Roshan Khurshed Bacha, who is today present with her in Court ; in July-2016 when I was not at home the Plaintiff came to my house at Jogeshwari in an ambulance demanding certain documents ; thereafter, I went to her house where her relatives started questioning me and rebuked and humiliated me. It is my humble submission that I am entitled to claim 50% rights in the shares, where I am shown as a joint holder with the Plaintiff ; I am willing to cooperate with the Plaintiff by providing whatever information she requires and by signing documents pertaining to shares etc.*

4. The Defendant is directed to file his Affidavit in Reply and forward a copy of the same to the Advocate for the Plaintiff within a period of three weeks from today. The Plaintiff shall file her Affidavit in Rejoinder, if any, within a period of two weeks thereafter.

5. Place the above Notice of Motion for hearing and final disposal on 25th September, 2018 under the caption 'FOB'."

10. In compliance with the directions given by this Court in the Order dated 14th August, 2018, the Defendant filed his Affidavit dated 16th August, 2018 in the aforesaid Notice of Motion. In his Affidavit, Defendant No.1 has contended that the present Suit is nothing but a malafide attempt on the part of the Plaintiff, who is now influenced by others to malign Defendant No.1 who has otherwise taken care of her in her time of need. The Defendant No. 1 has sought to set out in detail as to how he had assisted the Plaintiff in recovering the estate of her late husband, post his death. It is his case that his mother is a childhood friend of the Plaintiff and that the Plaintiff and

his mother are second cousins ; he has known the Plaintiff since childhood ; when the Plaintiff was ill, he has taken care of her and he has helped her recover from the loss of her late husband ; after the death of the Plaintiff's husband, the Plaintiff's brother in law i.e. Homi Gazdar despite being requested by the Plaintiff, expressed his unwillingness to exclude his name from the assets which stood in the joint name of the Plaintiff's husband and the said Homi Gazdar ; it was on account of his intervention that the said Mr. Homi Gazdar agreed to part with half of the shares which belonged to the Plaintiff and her late husband ; it is solely due to his efforts that the Plaintiff was able to secure the shares which belonged to the Plaintiff and her late husband ; since the Plaintiff does not have any heirs, she expressed the desire that in view of the close relations between the Plaintiff and the Defendant No. 1, he should be a joint holder with her in respect of all her shares that were secured from Mr. Homi Gazdar ; therefore, the Plaintiff herself instructed the Defendant No. 1 to take all necessary steps for making himself the joint holder in respect of the said shares; it was in such circumstances that the Plaintiff voluntarily made the Defendant No. 1 a joint holder.

11. Not only that, according to the Defendant No. 1, the Plaintiff also requested to have his name inserted as a joint holder *inter alia* in respect of her bank accounts. It is also his case that the Plaintiff had engaged the services of Advocate K. C. Vazifdar who prepared her Will, Affidavit and Specific Power of Attorney all dated 3rd April, 1997. These have been annexed as Exhibits H, I and J to the Affidavit in Reply filed by Defendant No. 1. According to the Defendant No. 1, these documents will

demonstrate that the Plaintiff was fully aware of the fact that the Defendant No. 1 was a joint holder of her various assets and that the Plaintiff and the Defendant No. 1 enjoyed a cordial relationship. Therefore, according to Defendant No. 1 what is now stated in the Plaint is completely malafide, motivated and done under the influence of her relatives.

12. In view of the fact, that the Defendant No. 1 has only claimed 50% right in the shares belonging to the Plaintiff, the Plaintiff made an application to this Court on 6th October, 2018, for amendment of the Plaint and Notice of Motion, by adding the following prayers:

> *"(c) (i) Pending hearing and final disposal of the suit, this Hon'ble Court, be pleased to pass an order directing the Defendant No. 1 to forthwith complete all formalities of KYC procedure for activating the demat account maintained with Defendant No. 2 in respect of shares more particularly described in Exhibit "G" of the plaint.*
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> *(c) (ii) Pending hearing and final disposal of the suit, this Hon'ble Court, be pleased to pass an order:*
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> *(a) Directing the Defendant No. 2 to transfer 50% of shares mentioned in Exhibit "G" of the Plaint being (i) 3680 shares of Hindustan Unilever Limited (ii) 11250 shares of ITC Ltd. (iii) 100 shares of Nestle India Ltd. from the NSDL Demat Account ID:11372700 maintained with them in favour of the Prothonotary and Senior Master, High Court, Bombay or in favour of any person as this Hon'ble Court may deem fit for the said purpose.*

(b) Permit the Plaintiff to sell 50% of shares mentioned in Exhibit "G" of the Plaint being (i) 3680 shares of Hindustan Unilever Limited (ii) 11250 shares of ITC Ltd. (iii) 100 shares of Nestle India Ltd. from the NSDL Demat Account ID:11372700 in the open market by engaging the services of the Stock Broker who is empanelled with the High Court, Bombay and release the net sale proceeds thereof in favour of the Plaintiff.

(c) Directing the Defendant No. 1 to execute the necessary documents in relation to sale of the balance 50% shares as per clause (b) above."

The said amendment was sought in order to enable the Plaintiff to liquidate her undisputed 50% shares lying in the Demat Account maintained by the Plaintiff with the Defendant No. 2, so that the net sale proceeds could be utilized by the Plaintiff during her lifetime, to meet her day to day expenses. By an Order dated 6th October, 2018, this Court permitted the Plaintiff to carry out the aforesaid amendment. Pursuant to the said Order, the Plaintiff has duly amended the Plaint and the Notice of Motion and a copy of the amended Suit and the Notice of Motion was served on the Defendant No.1 on 13th October, 2018.

14. It is the case of the Plaintiff, that in view of the specific statements made by the Defendant No. 1, as recorded in the Order dated 14th August, 2018, at the highest, the Defendant No. 1 is making a claim in respect of only 50% shares lying in the Demat Account maintained by the Plaintiff with Defendant No. 2. Considering the advanced age of the Plaintiff, if the matter is to await the final disposal of the Suit, then she will not be able to enjoy even the proceeds of the 50% shares which are lying in the

said Demat Account, which undisputedly belong to her, and in which the Defendant No. 1 is not claiming any rights.

16. To balance equities and to ensure that the Plaintiff is able to enjoy at least her undisputed property in her lifetime, the Plaintiff submits that this Court be pleased to pass an order directing liquidation of 50% of the shares lying in the Demat Account of the Plaintiff maintained by the Plaintiff with the Defendant No. 2. She further submits that 50% of the net sale proceeds of the said shares be handed over to her, so that she can enjoy the benefits of her undisputed property in her lifetime. The Plaintiff further fairly submits that for the purpose of safeguarding the alleged claim of the Defendant No.1, the balance 50% shares may remain deposited in this Court till the final disposal of the Suit.

17. Therefore, in the Plaintiff's submission, the Plaintiff has made out more than a prima facie case towards her entitlement in respect of these shares, or at any rate in liquidating her undisputed 50% share in the Demat Account maintained with Defendant No. 2. She further submits that considering her advanced age, her ailments and that she is not in the best of health, the balance of convenience would certainly be in her favour and the same would require that an order in terms of prayers (c)(i) and (c)(ii) of the Notice of Motion, be passed.

18. On the other hand the Advocate for the Defendant No. 1 has contended that the orders prayed for by the Plaintiff should not be passed.

19. I have considered the submissions advanced on behalf of the Plaintiff as well as Defendant No. 1. It appears that the Plaintiff and her husband being old, and they having close ties with Defendant No. 1, were receiving assistance from Defendant No. 1 whenever they needed the same. Defendant No. 1 has also assisted the Plaintiff after the demise of her husband. Though, it is the case of the Plaintiff that Defendant No. 1 has betrayed her trust, even if it is accepted that the Plaintiff had allowed him to join his name in the shares, or her bank accounts, admittedly, Defendant No. 1 has not contributed a single rupee towards sale consideration of the Suit shares nor has he deposited any amount in the bank account and has also not claimed to have given any monetary assistance to the Plaintiff. It is relevant to note that nowhere in the Affidavit in Reply the Defendant No. 1 has stated the nature of his right in the shares or the other assets of the Plaintiff where he is shown as the joint holder. It is not even the case of the Defendant No. 1 that the Plaintiff has ever transferred any of these shares or other assets or investments to the Defendant No. 1, which otherwise solely belong to the Plaintiff. It is further not his case that he has any legal right to any of these shares. All that the Defendant No. 1 has stated is that the Plaintiff, out of her love and affection for the Defendant No. 1, decided that his name be added as a joint holder in respect of these shares and bank accounts. The Advocate for Defendant No. 1 has failed to explain the basis on which Defendant No. 1 claims 50% ownership in the Suit shares or the dividends received in respect of the Suit shares. Instead of allowing the Plaintiff to sell her own shares, so that the proceeds of the sale can be utilized by her in

her old age, or that she can utilize the same for doing charity, by forming a Trust, which she is desirous of doing, Defendant No. 1 has taken an unreasonable stand by not allowing her to sell the Suit shares. However, the Plaintiff at this stage is wanting to sell only the 50% of the subject shares towards which Defendant No. 1 has not made any claim. The Defendant No. 1 is not agreeable to allow even this. When this Court asked the Advocate for the Defendant No.1 as to how his Client would be prejudiced if the net sale proceeds of the undisputed 50% shares of the Plaintiff would be paid to her, he had no answer. His only argument was that considering the fact that he is a joint holder of the said Demat Account, and in view of the facts stated by him in his Affidavit in Reply, it would be unfair if these shares are liquidated at this stage. Though, I am prima facie satisfied that the ownership qua the Suit shares is that of the Plaintiff and not just 50% of the same, as claimed by Defendant No. 1, since we are at the interim stage, I am not passing any order allowing the Plaintiff to sell all the subject shares and utilize the sale proceeds in the manner she desires, because the same will amount to disposing of the Suit in favour of the Plaintiff at the ad-interim stage. However, at the same time, the Defendant No. 1 cannot be allowed to take an unreasonable stand of not allowing the Plaintiff to sell 50% of the subject shares, which even according to Defendant No. 1 belong to her. The Defendant No. 1 has taken a totally unreasonable stand only to pressurise the Plaintiff, who is 86 years old, into submitting to the claim of the Defendant No. 1 that he has ownership of 50% of the subject shares, at this stage itself, without a trial. The balance of convenience is overwhelmingly in favour of the Plaintiff and against Defendant No. 1.

20. In the backdrop of the above facts and circumstances, I pass the following Order :

i. Mr.S.T. Kapse, Additional Prothonotary and Senior Master, High Court, Bombay is appointed as an officer-in-charge of the Suit shares lying in Demat Account ID No. 11372700.

ii. Mr. Kapse shall sell 50% of the Suit shares through Defendant No. 2 i.e. Integrated Enterprises (India) Private Limited, 59, Sonawala Building, Ground Floor, Bombay Samachar Marg, Fort, Mumbai - 400 023 and pay the net sale proceeds of the same to the Plaintiff.

iii. Defendant No. 1 is directed to cooperate and sign such documents and do such acts and deeds as are necessary for this purpose, or as may be directed by Mr. Kapse.

iv. As far as the balance 50% of the Suit shares are concerned, the same shall be deposited in a new Demat Account, which shall be opened by Mr. Kapse and the said balance 50% of the Suit shares shall remain in the custody of the Court until the hearing and final disposal of the Suit.

v. A separate bank account will be opened by Mr. Kapse in the joint names of the Plaintiff and the Defendant No.1, wherein the dividends received qua the balance 50% of the Suit shares shall be deposited and neither party shall utilize the dividends so deposited without seeking prior permission of this Court.

vi. The hearing of the above Suit is expedited.

vii. Defendant No.1 shall file his Written Statement on or before 5th February, 2019.

viii. Place the above Suit for framing of issues on 15th February, 2019.

ix. The above Notice of Motion is accordingly disposed off.

xi. It is made clear that the Suit shall be decided without being influenced by any of the observations made herein.

(S. J. KATHAWALLA, J.)