

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 1965 OF 2017
WITH
WILL NO. 845 OF 2017**

Manjulaben K Sanghvi	...Petitioner
<i>And</i>	
Kasturchand Jetshibhai Sanghvi	...Deceased

**WITH
TESTAMENTARY COMPLAINT NO. 1 OF 2018**

Lakdawala & Company	...Complainant
<i>Versus</i>	
N Jivani and Ramesh Tukrul	...Respondents

Mr Gauraj Shah, *i/b M/s Chitnis Vaithy & Company, for the
Petitioner in Testamentary Petition No. 1965 of 2017.*
Mr Rajiv Patil, Senior Advocate, *with Ms Seema Sarnaik, Ms
Sangeeta Salvi & Mr Dushyant Purekar, for Respondent No.2 in
Testamentary Complaint No. 1 of 2018*
Mr S Lakdawala, *Complainant in Testamentary Complaint No. 1 of
2018.*
Mr Ankit Lohia, *with Mr Tejas Vora, for Respondent No.1 in
Testamentary Complaint No. 1 of 2018*
Mr Ketan Trivedi, *Additional Prothonotary and Senior Master,
present.*

**CORAM: G.S. PATEL, J
DATED: 26th September 2018**

PC:-

1. Although there will be separate directions in these two matters, they are taken up together since both pertain to the working of the testamentary department in this Court.

2. To describe this as 'working' is perhaps an overstatement. For far too long, this department has been bedevilled with all manner of problems. Over many years, complaints, albeit informal, have reached us. These complaints are of different hues: unauthorised persons accessing the department, a few persons monopolising and dominating almost all departmental work, a lack of any system or orderliness in the functioning of the department, mishandling of papers, documents and files, records being taken away, a complete lack of security and supervision, and more. I am not venturing into even the broadest description of the second set of allegations, which relate to quite astonishing sums being demanded, and not just by lawyers, or not even by lawyers, for routine administrative work, down to demanding several tens of thousands of rupees to take an otherwise ready grant or certificate. I have no concern with that today; perhaps on some other day I will. This is, therefore, an advisory or caution to all who work in and with the department. The administration of this court is not oblivious to what is going on. That we show restraint is not to be mistaken or misunderstood for weakness. We are keeping a close watch. At appropriate times, there will be administrative or even judicial intervention. All those who have legitimate business with the testamentary department will pay heed to this: that when the time comes, that intervention will be swift, and it will be unmerciful to

those who attempt to 'game the system'. Above all, we have a concern with maintaining orderliness in the functioning of every department. The testamentary department is no exception. Everything that happens in every court is guided by, and only by, reason, fairness, civility and orderliness.

3. The functioning of this department is crucial *inter alia* because of the provisions of the Indian Succession Act, 1925. There is a great deal of wealth involved with sizeable estates required to be administered. This is a department that is wholly recession-proof: people die, no matter what the state of the economy, and their estates then must be dealt with in accordance with law. Whether contested or uncontested, every testamentary case is a progression *by law*, and it cannot be allowed to become anything else; most emphatically not a hunting ground for the unscrupulous and the predatory. Applicants in this department are not, only because the law compels them to a particular course of legal action, to be victimized and treated as easy prey. That we do not acknowledge and speak of these ills openly, and do not address ourselves to remedies as often as we should does not mean these evils do not exist. They do, and we have so far proceeded on the basis, I believe, that these are aberrations, not the norm. But when these wrongdoings proliferate as they have in recent times, then it is time to act.

4. I note this not with a view to making or accepting any allegation against any particular individual, either a lawyer or a clerk, but only to provide context to what follows. For it seems to me that an individual complaint, whether by Mr Trivedi, Additional

Registrar/Prothonotary and Senior Master, or by Mr SU Lakdawala, an Advocate at this Bar, is apt to be misread or misunderstood unless set in context.

5. It is for also this reason that I say that until recently it was true that there was something rotten in the state of the testamentary department. This was brought home to me not long ago, on 23rd April 2018, when an Advocate mentioned the matter before me, and to my very great surprise I found that he had the *original* Court Records in his hands. Those should have been with the clerk or associate of the court, not the advocate. I made a mention of this in Judge's Order No. 35 of 2018, and directed the Prothonotary and Senior Master to immediately institute a control mechanism for restricting access to Court records. This is what I said:

1. The Advocate for the Petitioner attempted to mention the matter this morning for a date. He had a praecipe. **To my very great surprise, he also then had in his hand the complete original Court record which he attempted to give to my Court Associate. It seems that he obtained this record from the Testamentary Department on the pretext of removing objections. The Testamentary Department is extremely crowded and a separate table is kept outside where Advocates can carry out amendments, remove objections etc. There is obviously no supervision and this means that advocates and perhaps even parties directly access original court records at will. There is no control over what is being done with the original court record. This is how this Advocate could have personally taken that court record and brought it to this court.**

2. Mr Mathkar and Mrs Bhatt says that the Testamentary Department is so overcrowded that at any given time there are over a hundred advocates crowding into that department, and there are only two peons. It is impossible to supervise and keep a control who is doing what.

3. The Prothonotary and Senior Master is directed to issue suitable directions to institute a quota control system for accessing the court records. The purpose for the access (removing objections, effecting amendments, inspection, etc) should be communicated to the department, and no access beyond the legitimate should be permitted. Photographing Wills, when permitted, is never to be permitted in the outside corridors. Tokens are to be issued for visiting the department for these purposes that require the papers to be taken to the table or desk outside. The Registry will decide the maximum number of tokens that can be issued per hour for visiting the department. The tokens should, of course bear a marking of the time-slot so that each token can only be used during that designated period. Whether it is 25 persons per hour or 50 persons per hour, or more, or less, is for the Registry to decide. The Prothonotary and Senior Master will also ensure that during these designated hours there is a peon, and if necessary engage additional staff, deputed to attend to that table which is set in the corridor outside the Testamentary Department. This is to ensure that original Court records are not taken away from there. The Prothonotary and Senior Master will also consider issuing a practice direction or note in this regard.

4. As to the matter in hand, the original records are given to Mr Mathkar in Court today. They will be returned

to the Registry. On the praecipe, no orders. The matter is not to be listed except in due course or at the instance of the Registry.

(Emphasis added)

6. It is following this that on 7th May 2018, the Prothonotary and Senior Master issued an office order. That office order specifically references my order of 23rd April 2018. This is how the office order reads:

OFFICE ORDER

It has been observed by the Hon'ble Shri Justice GS Patel, while obtaining circulation by Advocate for Petitioner in Judge's Order bearing No. 35 of 2018 in Testamentary Petition No. 312 of 2018, that under the pretext of carrying out amendment or removing office objections, said Advocate has carried original records and proceedings in above Petition to Court Room of His Lordship, by himself and mentioned the matter for obtaining circulation. To restrict such practice, His Lordship has directed the undersigned to issue necessary directions as mentioned in Order dated 23rd April 2018 passed in said Judge's Order.

To restrict the direct access, to the Advocates and parties, to the original records and proceedings, as per directions of His Lordship, with immediate effect, the following directions are given:

1) Advocates and parties appearing in person are hereby directed to submit praecipes, minimum one day in advance, to enable the Testamentary Department to keep required records and proceedings ready to next date or date asked for.

2) They are further informed that upon receipt of said praecipies, they will be informed about the acceptance of date for handing over original records to them for removing office objections, amendment, inspection, etc, as well as duration of time for completion of said work to enable the Department to accommodate next batch of Advocates and parties appearing in person to attend the Department.

3) The original records will be handed over to them upon making necessary entries in the Register maintained for and while returning the records they again have to make necessary entries in said Register.

4) They are allowed to remove office objections or carry out necessary amendment either in the Department itself or space available in the corridor out side the Department, only during the time allotted in their praecipe.

5) The inspections of records and proceedings will be given in from of the official of the Testamentary Department.

6) They are further informed that in case they need to take original records to the Associate Rooms or to any concerned Officers, they have to make such entries in the Register maintained for and while returning the records again make the necessary entries in the said Register.

7) The total number of Advocates and parties appearing in person, to whom such entry in the Department is allowed, and duration of time to remain present in Department for such work will be decided by the Master (Adm.) or senior Section officer of Testamentary Department, but it shall not be more than 10 Advocates/Parties for each table per hour.

8) They are further informed that photographing Wills, when permitted, is never to be permitted in the outside corridors.

They are, therefore, directed to adhere all the directions mentioned hereinabove scrupulously, failing which report will be made to the Hon'ble Judge hearing Testamentary matters for necessary directions.

Dated this 7th day of May 2018.

(Emphasis added)

7. The office order was, thus, issued pursuant to a judicial order. I note this because there is an impression sought to be created that Mr Trivedi has, in instituting the token system, acted erratically, irrationally, without authority, despotically and without any need; in short, without context. That is wholly and utterly untrue. Mr Trivedi has put in place the token system and time-slots for defined intervals in a prescribed time frame in the morning and in the afternoon sessions. These are specifically earmarked to allow Advocates and their registered clerks to access the department and its files, to attend to compliances, remove office objections and so on. This is necessary because not every matter in the testamentary department is contested. In fact, a very large number of them are never contested at all and are dealt with departmentally. That still means, however, that Advocates and their registered clerks must attend to the department at regular intervals and they must therefore be given reasonable access to the files. But equally, this also means that registered clerks who are engaged by more than one Advocate, assuming that is even permissible, cannot be allowed to dominate the work in the testamentary department or to consume

all the timeslots. There are, after all, individual practitioners who attend to these matters themselves. There are also parties in person who wish to see through their own matters without the services of an Advocate, let alone a registered clerk. In its approach the department, like the Court, must be even-handed and completely agnostic. There is no special treatment for Advocates or registered clerks, nor should there be.

8. The institution of this system has understandably caused a disruption to the existing *status quo*. That cannot be helped. It is not the task of this court, on any side judicial or administrative, to strive only to maintain some self-serving *status quo*, even if this is demonstrably unfair to many. There is no justiciable right, let alone a fundamental right, to monopolizing the work in any department, or to maintaining a strangle-hold over who can attend the department. Some of the clerks working in the testamentary department have made a representation. That will be considered by the Committee in question on some convenient date. I am not addressing that representation at all. It is only enough to note that some of the issues were taken up by the Computer and CMIS Committee of which I am a member and there is a proposal being worked out, expected to be instituted shortly, of having an online system for taking appointments for these timeslots so that long queues to obtain tokens are not necessary. In addition, we have proposed a combination of both a manual and digital online system so that a person visiting the department can make the booking at the department and this will up-date the online system automatically. Obviously, some work needs to be put in regarding the software and system but this is expected to go live within two or three weeks and

not much longer than that. The intention even in this is to ensure fair play and even handedness for all who need to come to the testamentary department for any work. Most of all, there is a need to ensure that a handful of persons do not block-book the time-slots. The last thing anyone wants or needs is to create a black market for time-slots.

9. It is also incorrect to suggest that the new system has met only with complaints or that there have been none who have found merit in it. Indeed, quite the contrary: on the administrative side we have received comments from several practitioners that the new system finally gives them a fair opportunity of attending to their matters in a timely fashion.

10. Overall the objective is this: irrespective of who is attending to the matter, an uncontested Testamentary Petition must reach its conclusion in no more than three months from the date of filing. That is the outer limit. This is subject of course to the Advocate or party attending to office requisitions in a timely fashion.

11. In order to further facilitate this, I have directed that the department draw up a list of all old pending matters that are contested where issues have not yet been framed or where trials have not yet begun. The results of this exercise, though in a tentative and preliminary report, are already alarming. There are contested Testamentary Petitions in this pre-trial stage going back at least two decades. This is the first time that we have been able to even identify these matters and to have them listed. There are

similarly testamentary matters where Caveats have been filed but where issues have not been framed for several decades. In both categories there are 2000 such matters and there are some 62 matters where even issues have not yet been framed. This is therefore, an attempt at a systematic approach to handling the work in the testamentary department. I am taking the trouble to mention all of this only to show that any attempts at disruption are not going to be tolerated. Individual interest will necessarily be subordinated to the larger interest that is at play in these matters, with everything that this implies.

12. Finally, the earlier practice of leaving matters unattended in the department and saying that a first notice, second notice or final notice has been issued has now stopped. Each and every matter will now be listed on a scheduled date on the board of the Assistant Prothonotary and the necessary orders will be passed. This is to ensure that there is timely attendance to the matters and so that they do not remain pending for months and years together in this state. A notice dated 25th September 2018 to this effect has already been published and, there is in addition, for the greater convenience of parties, a warn list that has also been separately issued.

13. With this background, I turn to the two matters that are listed today before me. The first of the two matters is placed at the instance of Mr Trivedi. Testamentary Petition No. 1965 of 2017 seeks Letters of Administration with Will annexed. The Will propounded is of 17th January 2016. It is supposed to have been made by one Kasturchand Sanghvi who died on 28th March 2016.

14. Mr Trivedi reports, and this is endorsed in hand on 25th September 2018 on a praecipe from the Advocates M/s Chitnis Vaithy and Company that on that day at 12.15 pm, Mr Trivedi found one GV Acharnekar in the department assisting the clerk of M/s Chitnis Vaithy. Mr Acharnekar is apparently an ex-employee of the High Court. He is not a registered clerk. He is not an Advocate. The Chitnis Vaithy clerk was apparently being 'assisted' by Mr Acharnekar. For any number of reasons this is unacceptable. On the Original Side, Rules 8 and 9 deal with registered clerks. These are the principal Rules and this is how they read:

R.8. Registered clerk.— An Advocate may employ one or more Clerks to attend the Office of the Prothonotary and Senior Master for presenting the receiving any papers on behalf of the said Advocate:

Provided that the said Clerk has been registered with the office of the Prothonotary and Senior Master on application made to the Prothonotary and Senior Master, for the purpose.

Provided further that the said Clerk given an undertaking that he shall attend the Office of the Prothonotary and Senior Master regularly.

(2) No clerk employed by an Advocate shall be allowed access to the Offices of the Court, or to present and receive papers or to act, on behalf of Advocate, in formal matters unless he registered as a Clerk of that Advocate.

(3) An Advocate, who does not employ a clerk as stated hereinabove, shall attend the office of the Prothonotary and Senior Master, personally and regularly for presenting and receiving his papers and he will be deemed to have notice

of all the communications, concerning him and placed on the Notice Board of the Office.

R.9. Removal of name of clerk from Register.— The Prothonotary and Senior Master may decline to register any clerk who in his opinion is not sufficiently qualified or is otherwise unsuitable to be registered as such and may for reasons to be recorded in writing, remove from the Register the name of any clerk after giving him and his employer an opportunity to show cause against such removal.

15. There is thus no absolute right to be registered as a clerk. There may be a right to apply, but that application is not a foregone conclusion. There is a purpose behind these Rules and that is to ensure that the person handling or attending to documents on behalf of an Advocate is authorised to do so and acts in a responsible, transparent and accountable manner. If anyone and everyone is allowed to “assist” a clerk, the result is unimaginable. There is then no control on who enters the department and for what purpose. The Advocate of the clerk is perfectly at liberty to take the advice of any ex-employee. But that will be done outside Court. No ex-employee is to enter any department and most especially not the testamentary department unless he or she is authorised by our Rules to do so. Mr Shah on behalf of the M/s Chitnis Vaithy and Company is instructed to tender an unconditional apology. For the firm this is accepted, this being a first instance. For that very reason I do not propose to accept Mr Trivedi’s suggestion that the matter itself should not be further processed for a few months. There is no reason why the litigant should have to suffer. However, Mr Acharnekar is not to enter the testamentary department under any

circumstances whatsoever. If he attempts to do so, Mr Trivedi is fully at liberty to have him evicted from the premises and if necessary to make a police complaint on the strength of this order. Testamentary Petition No. 1965 of 2017 will be listed and taken up in the normal course by the department. The registered clerk of M/s Chitnis Vaithy and Company is at liberty to attend the matter in the normal course.

16. The second matter has a different complexion. This has been numbered as a complaint. This is a written complaint by Mr SU Lakdawala, an advocate practising on the Original Side of this Court. The substance of the complaint dated 25th September 2018, one that I am not, today, necessarily accepting or acting on, although I am also not suggesting that what Mr Lakdawala says is untrue is this: He says that recently one Ramesh Tukrul, who is present in Court and represented by Mr Lohia, a former employee of M/s Shah and Sanghavi, has been intimidating Mr Lakdawala and threatening to disrupt, interrupt or even stop his practice in the testamentary department. Later in the same complaint, Mr Lakdawala makes a separate allegation of an incident that he says took place on 24th September 2018 when he was, he claims, threatened by one Mr Jivani, described as a 'senior' clerk, although there is no such thing, who has been attending the matter in the testamentary department for a long time. On this: we have senior counsel. That is mandated by law. We do not have senior clerks. None are to claim any such status.

17. Mr Patil is instructed to appear for Mr Jivani and quite correctly points out that this is not a situation that should be allowed

to spiral out of control. That would not be in the interests of any party. In fairness, he accepts that the new system has caused some upset to those who were more used to the earlier method or practice. He submits that there is a representation made and that has to be considered. He does not accept the correctness of what Mr Lakdawala says in his complaint but readily accepts that there should be no such incident within the precincts of the Court at all. That is absolutely correct. For those of us who have had Mr Lakdawala appear in our Courts, we know him to be courteous at all times, and soft-spoken to a fault — indeed, sometimes to the extent that we have to tell him to speak up. It is, therefore, with a great deal of concern that I read his letter and its contents. If what he says is true, then it calls for the most severe and stringent action against those he names. I do not think that any purpose will be achieved by entering into a controversy testing the rival claims on either side. Mr Lakdawala himself agrees; and says it is not his intention to exacerbate the matter. He only wants to be left alone to manage his own matters in the department without interference and without obstruction. That is wholly unexceptionable. As Mr Patil and Mr Lohia point out what needs to be done is to establish an agreed protocol and there must be an understanding for the orderly, mannerly and lawful progression of matters in Court.

18. Mr Tukrul stands on a different footing from Mr Jivani for the simple reason Mr Tukrul is not yet a registered clerk although he has sought registration. He used to be a registered clerk while with M/s Shah and Sanghavi. After that employment ended, he has sought registration again. The result is that he does not have today the necessary authority to attend to matters in the department and is

therefore not to enter the department till such time as he obtains registrations. Mr Tukrul is present in Court and he instructs Mr Lohia to give an undertaking in these terms which I will accept. This order is not to be construed as a reason for rejecting Mr Tukrul's application for registration. That will have to be considered by the department on its merits.

19. After a fruitful discussion in Court, Mr Lakdawala, Mr Patil and Mr Lohia are all agreed that with some modifications the existing system can be worked out to the benefit of all. Everybody accepts that there should be no monopolization of the non-contentious testamentary work in the department by any lawyer or any particular clerk. Everybody also accepts that there must be a fair opportunity to all to properly attend to their matters.

20. Before considering the individual suggestions and issuing directions, I think it is necessary to emphasize the need to maintain an attendance sheet for every advocate or clerk who attends the matter departmentally. I have found this to be essential because there are often questions about who attended to a particular matter or carried a particular amendment. The Advocate himself is often unable to tell with precision which clerk attended to the matter on what date. There can be no objection to this and all accept it. Mr Trivedi tells me that an attendance sheet system is already in place. This will continue.

21. Mr Patil makes a suggestion supported by Mr Lohia and Mr Lakdawala that there should be separate timeslots reserved

exclusively for Advocates, when no clerks will be permitted to attend to the department. The suggestion is to have a one hour slot from 10.45 am to 11.45 am and a second one hour slot from 4.15 pm to 5.15 pm, exclusively reserved for Advocates. This is accepted. During these hours, no registered clerks will be permitted to enter the department to attend to any testamentary matter. By Advocate, I mean an Advocate or his junior or assistant i.e. any person who is with the Advocate *except* the registered clerk.

22. For the registered clerks there will be a separate distinct timeslot after 11.15 am and before 4.15 pm which will be decided by Mr Trivedi so as to ensure that between 15 and 20 tokens can be issued in the course of a day. This system is subject to review periodically. The Advocates and clerks concerned may place their suggestions before Mr Trivedi but they will do so after giving the existing system some fair time to operate.

23. It is not possible to allow Advocates and their registered clerks to access the department in the timeslots that are exclusively reserved for one or the other. I find Mr Patil's suggestion that a separate timeslot be reserved for Advocates to be eminently reasonable and I have accepted that but this does not mean that in the slots that are otherwise available for registered clerks, Advocates should also be permitted. This will be unfair to the registered clerks also. Between them, the Advocates and registered clerks must co-ordinate as to how matters are to be handled.

24. As of 1st October 2018, when matters are listed before Mr Trivedi and other officers of this department, directions will be issued for removing of office objections and, at that very time an advance booking may be taken for the date on which the objections listed will be removed. All accept this as reasonable and efficient.

25. On alternate Saturdays and during the court vacations, when the department is functioning the timeslots may be increased or expanded suitably to allow for more persons to attend to their matters.

26. As to the maximum number of times a particular Advocate may call on the department or a particular registered clerk can visit the department (irrespective of how many Advocates he represents) on a given day, I do not think that there is any merit in fixing a number in a judicial order. It is better to leave this to the discretion of the head of the department to be adjusted as required. I have no doubt that Mr Trivedi will fix a number that is reasonable for both categories.

27. For the present, I do not think any further orders or directions are required in either of these matters. Both matters will be shown as disposed of.

28. Lastly, I would only request Mr Trivedi to ensure that a copy of this order is placed before the Committee to whom the registered clerks have made their representation.

29. Liberty to Mr Trivedi and the Advocates practising on the testamentary side to apply either on the administrative side or the judicial side in either of these matters.

(G. S. PATEL, J)