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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 76 OF 2018
IN
SUIT NO. 34 OF 2018

Bimal Indravadan Joshi & Ors ...Plaintiffs
Versus
Mridula Jaisinh Kapadia & Ors ...Defendants

Mr Rajiv Narula, *with Karl Tamboly, i/b Bhairavi Pathak, for the Plaintiffs/Applicants.*
Mr Snehal Shah, *with NC Parekh, i/b Mansukhlal Hiralal & Co., for Defendants Nos. 1 and 3.*
Ms Rajni Iyer, Senior Advocate, *with Aditya Thakkar, i/b Mansukhlal Hiralal & Co., for Defendant No. 2.*

CORAM: G.S. PATEL, J
DATED: 2nd May 2018

PC:-

1. Parties have drawn up minutes which will suffice to serve as a working interim order and dispose of the present Notice of Motion.
2. The 2nd Defendant, Ms Nina Kapadia, is an Advocate of this Court. Parties agree that she may be appointed, and she is hereby appointed, as a private Receiver of (i) the immovable properties described in Exhibit "D" to the plaint and (ii) the shares listed in

Exhibit “C1” to the plaint (subject to the qualification about accuracy of that list mentioned below).

3. As regards the immovable properties, the 2nd Defendant has the powers to collect the rent and pay all outgoings in respect of the properties listed in Exhibit “D” to the plaint. The 2nd Defendant will of course be required to pay for property taxes, statutory dues, routine maintenance and repairs. These expenses may be met in the first instance from the income from the tenanted buildings. If there is any shortfall, the 2nd Defendant will be entitled to draw on the income generated or interest or as the case may be from the shares listed in Exhibit “C1” to the plaint (as modified in terms set out below).

4. The 2nd Defendant will not, however, alter any tenancies, create any new tenancies or accept any application for transfers of tenancies (even if styled as or coupled with a relinquishment of the old tenancy) without prior permission of this Court obtained after at least two weeks’ previous written notice to the Advocates for the Plaintiffs.

5. The 2nd Defendant shall, by 15th June 2018, file in this Court an Affidavit annexing a list of tenants of the properties described in Exhibit “D” to the plaint and shall indicate which of those tenancies are residential and which are accepted as being commercial. A copy of this Affidavit is to be furnished to the Advocates for the Plaintiffs.

6. The 2nd Defendant has stated that the list of shares at Exhibit “C1” may not consist exclusively of shares belonging to the deceased. That list may have in it shares that belong to other individuals. The list at Exhibit “C1” is, therefore, subject to both rectification and verification. The 2nd Defendant undertakes that in an Affidavit particularizing the shares, which she shall file by 15th June 2018, she will separately indicate those shares that do not belong to the deceased’s estate. Inspection of the necessary supporting documents will be given to the Advocates for the Plaintiffs. To this further Affidavit relating to the shares, there will be annexed two lists. The first will be a list of shares in Exhibit “C1” as it stands. The next list will be marked Exhibit “C1-(II)” and will be the list at Exhibit “C1” with the necessary changes marked thereon, so that there is no controversy in this regard going forward.

7. The 2nd Defendant will proceed to dematerialize the physical shares described in the corrected list to be prepared as mentioned above. The demat shares that are in the estate of the deceased will be held in a separate account to be opened by the 2nd Defendant. That account number will be communicated to the Advocates for the Plaintiffs.

8. The 2nd Defendant will maintain a complete account of all income and expenditure from both the immovable and shares mentioned above. She shall every six months file a statement of accounts on Affidavit. It is clarified that these accounts are not required to be audited at this stage. A statement of income and expenditure will be attached to such bi-annual Affidavits. This Affidavit will also contain necessary details of the expenditure

incurred on the immovable properties mentioned in Exhibit “D”. Copies will be furnished to the Advocates for the Plaintiffs..

9. Should the 2nd Defendant be required to draw on the income or the interest on the shares/investments in order to pay for any expenses related to the buildings, she will inform the Advocates for the Plaintiffs if possible two weeks in advance before doing so.

10. If the corrected list at Exhibit “C1” is agreed upon, leave to amend the plaint to insert the corrected list as Exhibit “C1/A”. Reverification dispensed with. If the corrected list is not agreed on, liberty to the parties to apply.

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

(G. S. PATEL, J)