

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISC.APPLICATION (L) NO. 2 OF 2018
IN
PETITION NO. 1610 OF 2018

Amardeep Singh Sujan Singh Chadha Deceased

Davinder Kaur Amardeep Singh Chadha)
of Mumbai, aged 62 years,)
Occupation – Housewife, Sikh,)
Indian Inhabitant, widow and)
legal heir of the deceased abovenamed,))
residing at Flat nos. 301, 302,)
3rd Floor, Preetika Apartments,)
Saraswati Road, Santacruz (West),)
Mumbai 400 054.) Applicant

VERSUS

Inderjeet Singh Amardeep Singh)
Chadha @ Supremo)
residing at Flat nos. 301, 302,)
3rd Floor, Preetika Apartments,)
Saraswati Road, Santacruz (West),)
Mumbai 400 054.) Caveator

Mrs.Veena Thadani, a/w. Ms.Priyanka Raul for the Applicant.

Mr.Omprakash Pandey, a/w. Ms.Anita Vasani, i/b. M/s.Pandey & Co.
for the Respondent.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 5th FEBRUARY, 2019

PRONOUNCED ON : 15th FEBRUARY, 2019

JUDGMENT :

By this miscellaneous application filed under section 247 of the Indian Succession Act, 1925 (for short the Succession Act), the applicant seeks her appointment as an administrator *pendente lite* in respect of the estate of the deceased late Mr.Amardeep Singh Sujan Singh Chadha with all rights and powers of a General Administrator and subject to the control of this court. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The applicant is a widow of late Mr.Amardeep Singh Sujan Singh Chadha. The respondent is son of the said late Mr.Amardeep Singh Sujan Singh Chadha and son of the applicant. Out of the wedlock of the applicant and the said late Mr.Amardeep Singh Sujan Singh Chadha, two children were born i.e.Mr.Inderjeet Singh Amardeep Singh Chadha @ Supremo Singh Chadha, son of the said late Mr.Amardeep Singh Sujan Singh Chadha and a married daughter Mrs.Gogi Kaur Keer @ Daljeet Tarvinder Keer.

3. On 26th November,1998, the respondent married Ms.Parmeetkaur. Two children were born out of the said wedlock. The said deceased late Mr.Amardeep Singh Sujan Singh Chadha was carrying on business in the name and style of M/s.Hotel Amardeep Lodging and Boarding and Restaurant at 3rd Road, Khar (West), Mumbai as the sole proprietor thereof till his death on 27th April, 2017. It is the case of the applicant that the respondent has studied only upto the 4th or 5th standard and fell into bad company and developed all bad

habits. It is the case of the applicant that due to the bad behaviour and interference with the business of M/s.Hotel Amardeep Lodging and Boarding and Restaurant which was run by the said deceased husband of the applicant, the said deceased suffered a paralytic stroke. The respondent took the advantage of the said situation and forcibly took over the management of the said business and started living a lavish life style.

4. Sometime in the year 2012, the husband of the applicant jointly with the applicant filed a suit which was subsequently numbered as 423 of 2014 in this court *inter alia* praying for a permanent injunction restraining the respondent from interfering or disturbing the business of running the hotel/lodging house or restaurant which was run by the husband of the applicant and also for various reliefs. The applicant and her husband had also filed a Notice of Motion (L) No.3225 of 2012 in the said suit.

5. The respondent filed affidavit in reply dated 7th December, 2012 in the said notice of motion and disputed the ownership rights of the deceased husband of the applicant in respect of the immoveable properties of the said deceased and claimed that the said properties were either ancestral properties or HUF properties or had been purchased by him by taking a loan from HSBC Bank which was repaid by him subsequently. In the said suit, the respondent herein filed a Notice of Motion No.1395 of 2013 and alleged that the said hotel M/s.Hotel Amardeep Lodging and Boarding and Restaurant was in his exclusive use and possession since last 20 years and that he has been

managing the business since last 20 years and was responsible for developing the said business.

6. It is the case of the applicant that the respondent opened a bank account fraudulently in the month of October 2013. The deceased husband of the applicant jointly with the applicant filed a police complaint on 7th January, 2014 against the respondent with the Senior Police Inspector, Khar Police Station, Mumbai.

7. It is the case of the applicant that on 29th January, 2014, the said deceased husband of the applicant executed a Will which was duly registered bequeathing all his properties to the applicant and excluded the respondent from all inheritance.

8. On 2nd May, 2015, the respondent separated with his first wife, Mrs. Parmeetkaur Supremo Inderjeet Chadha and the respondent and his wife filed a petition F-1727 of 2016 before the Family Court, Mumbai at Bandra under section 13-B of the Hindu Marriage Act, 1955 for divorce by mutual consent. By judgment dated 30th January, 2017 passed by the Family Court, the said petition came to be allowed and the marriage solemnized between the respondent and Mrs. Parmeetkaur came to be dissolved by a decree of divorce by mutual consent with effect from the said order.

9. It is the case of the applicant that the flat no.301 in Preetika Apartments which was in the name of the respondent was gifted by the respondent on 27th May, 2016 in favour of

Mrs.Parmeetkaur. Flat no.302 in the same building was in the name of the applicant. All though flat no.301 and flat no.302 were combined where the applicant resided with her husband all throughout in the said flat, the respondent gifted flat no.302 to Mrs.Parmeetkaur by executing a gift deed.

10. On 14th February,2017 the respondent married Ms.Sonu Pandey. On 7th March,2017, the deceased husband of the applicant was admitted to the hospital due to paralytic stroke. On 12th March,2017, the deceased husband of the applicant was discharged from the hospital but was still unwell. It is the case of the applicant that on 18th March,2017, the first wife of the applicant obtained a gift deed fraudulently from the applicant in favour of grand-daughter Ms.Hansmeet Kaur of flat which was owned by the applicant in the building Kusum Villa from which property the applicant was earning rent. It is the case of the applicant that on 18th March,2017, the first wife of the respondent fraudulently obtained a gift deed from the applicant in her own favour in respect of flat no.302 situated at 3rd Floor, Preetika Apartments, Saraswati Road, Santacruz (West), Mumbai 400 054 which flat was owned by the applicant. On 27th April,2017, the husband of the applicant expired.

11. It is the case of the applicant that in the month of October 2017, the applicant was shocked when the secretary of Preetika Apartments informed the applicant that the first wife of the respondent wanted to transfer the said flat no.302 in her name on the basis of the gift deed dated 18th March,2017. The applicant therefore obtained

copies of the two gift deeds dated 18th March,2017 under the provision of Right to Information Act in the month of November 2017.

12. On 13th December,2017, the respondent filed a testamentary petition bearing no.2458 of 2017 in this court *inter alia* praying for probate of the purported notarized Will dated 12th April,2017 of the deceased husband of the applicant and the father of the respondent.

13. On 7th November,2017, the daughter of the applicant Mrs.Gogi Kaur Keer @ Daljeet Tarvinder Keer filed a caveat in the testamentary petition filed by the respondent. On 2nd February,2018, the applicant herein filed a caveat in the Testamentary Petition No.2458 of 2017. On 21st March, 2018, the applicant filed a petition for Letters of Administration bearing no. TPL 971 of 2018 in respect of the alleged registered Will of the deceased dated 29th January, 2014.

14. On 10th April,2018, the applicant filed Notice of Motion (L) No.906 of 2018 in the Suit No.423 of 2014 which was filed by the applicant and her husband against the respondent, seeking appointment of the Court Receiver in respect of M/s.Hotel Amardeep Lodging and Boarding and Restaurant, for injunction restraining the respondent from entering into the immoveable properties of the deceased husband of the applicant and from dispossessing from flat nos. 301 and 302.

15. The applicant filed chamber summons bearing no.1033 of 2018 in Suit No.423 of 2014 seeking leave to amend the plaint by

deleting the name of the deceased husband of the applicant and for impleading the daughter Mrs.Gogi Kaur Keer @ Daljeet Tarvinder Keer and also substituting the old address with the new address of the respondent.

16. On 20th April,2018, the applicant filed a suit bearing (L) No.539 of 2018 challenging the gift deeds both dated 18th March,2017 in this court which is allegedly obtained by the wife of the respondent fraudulently from the applicant.

17. On 21st April, 2018, the applicant filed a notice of motion bearing (L) No.1030 of 2018 in Suit (L) No.539 of 2018 for injunction restraining the said Mrs.Parmeetkaur Supremo Inderjeet Chadha, the first wife of the respondent and Ms.Hansmeet Kaur from creating any third party rights in those two flats. On 21st April,2018, this court passed an order of status-quo in respect of flat no.302 in the said Preetika Apartments and also in respect of the flat in Kusum Villa.

18. On 20th June, 2017, the two children (twin) were born to the second wife of the respondent. On 21st April,2018, the respondent made a statement before this court in Notice of Motion (L) No.906 of 2018 in Suit No.423 of 2014 that the divorce between the respondent and his ex-wife Mrs.Parmeetkaur was only on paper of this court. This court recorded the said statement made by the respondent.

19. On 24th April,2018, the respondent filed an affidavit in Notice of Motion (L) No.906 of 2018 in Suit No.423 of 2014 alleging

that he was residing in the flat nos. 301 and 302 with his wife Mrs.Parmeetkaur and two grown up children.

20. On 27th April, 2018, Mrs.Parmeetkaur filed affidavit in reply in Notice of Motion (L) No.906 of 2018 alleging that the divorce decree between the respondent and the said Mrs.Parmeetkaur was only on paper. On 26th June, 2018, the respondent filed affidavit in Chamber Summons (L) No.577 of 2018 in the Suit No.423 of 2014 and reiterated that the decree of divorce between him and Mrs.Parmeetkaur was only on paper.

21. On 6th August,2018, the marriage between the respondent and Ms.Sonudevi Bholanath Pandey which was allegedly solemnized, was registered with the Registrar of Marriages, Mumbai.

22. On 27th February,2018, the applicant filed this miscellaneous petition *inter alia* praying for appointment as administrator of the estates of the deceased husband late Mr.Amardeep Singh Sujjan Singh Chadha. Mrs.Thadani, learned counsel appearing for the applicant invited my attention to various portion of the pleadings filed by both the parties, documents annexed to the miscellaneous petition and also to the compilation of documents filed by her and various orders passed by this court.

23. It is submitted by the learned counsel that flat no.301 was in the name of the respondent whereas the flat no.302 was owned and was in the name of the applicant. The applicant was also holding a flat

in her name on ownership basis in the building Kusum Villa.

24. It is submitted by the learned counsel that because of the illegal act of the respondent and misbehaviour with the husband of the applicant and also with the applicant, both of them filed a civil suit against the respondent for various reliefs.

25. Learned counsel appearing for the applicant invited my attention to the Will dated 29th January, 2014, duly registered which is propounded by the applicant which was executed by the deceased husband of the applicant and would submit that under the said Will, the husband of the applicant had bequeathed various properties of the said deceased in favour of the applicant. She submits that insofar as the property M/s. Hotel Amardeep Lodging and Boarding and Restaurant is concerned, it is stated in the said Will that it was an ancestral property and therefore the same shall be transferred in the name of the applicant and the respondent jointly. However, the management of the said hotel M/s. Hotel Amardeep Lodging and Boarding and Restaurant would remain with the applicant and the respondent shall not interfere with the management thereof to be looked after by the applicant.

26. Learned counsel also invited my attention to the alleged Will propounded by the respondent on 12th April, 2017 and would submit that even under the said alleged Will propounded by the respondent, insofar as the hotel M/s. Hotel Amardeep Lodging and Boarding and Restaurant is concerned, the said property is exclusively bequeathed in favour of the applicant. She also invited my attention to

the averments made by the respondent in the testamentary petition filed by the respondent i.e. 2458 of 2017 and would submit that the respondent himself having applied for probate in respect of the alleged Will dated 12th April, 2017, the respondent has admitted exclusive ownership of the husband of the applicant in respect of the said property, the respondent cannot be allowed to run the said hotel business or to claim any right, title or interest of any nature whatsoever in the said property and the said hotel business.

27. It is submitted that the applicant has to depend upon the mercy of her daughter. The respondent who got the control of the said property has not been paying any amount to the applicant though the respondent can neither claim any share in the said property nor can be permitted to manage the hotel business. It is submitted by the learned counsel that the respondent has threatened the applicant to throw her out of the house and also that he and his first wife would stop giving her food and medicines.

28. It is submitted by the learned counsel that the respondent has illegally taken over the control of the hotel business and has been spending lavishly. She submits that under the said judgment of the Family Court passed in the consent petition filed by the respondent and Mrs. Parmeetkaur, the respondent agreed to pay a sum of Rs. 7,00,000/- per month to Mrs. Parmeetkaur at the same time and the respondent as well as the said Mrs. Parmeetkaur have filed two separate affidavits in various proceedings alleging that the said divorce between the said respondent and the said Mrs. Parmeetkaur was only on paper.

29. It is submitted by the learned counsel that even in respect of the flat no.302 which was owned by the petitioner and was in the name of the applicant, the said Mrs.Parmeetkaur has fraudulently obtained a gift deed from the applicant and also similarly taken gift deed in respect of the another flat in Kusum Villa Apartments. The applicant has already filed a separate suit impugning those two gift deeds. This court has already passed an order of *status-quo* in flat no.302 and flat in Kusum Villa. It is submitted by the learned counsel that both the parties are propounding two separate Wills of the deceased husband of the applicant.

30. Learned counsel for the petitioner submits that the respondent has no right, title or interest of any nature whatsoever nature even according to the Will propounded by him in respect of Amardeep Hotel business and thus he cannot be allowed to run the said business and that also without paying any amount to the petitioner who has been bequeathed the said property even according to the alleged Will propounded by the respondent. He submits that admittedly out of the income generated from the hotel business, the respondent has been paying substantial amount by way of monthly compensation agreed to be paid by the respondent to his first wife under the consent decree. She submits that since the respondent did not have any right, title and/or interest in the hotel business, the respondent cannot be allowed to misuse and/or spend any amount from the said business which is absolutely bequeathed in favour of the petitioner.

31. It is submitted that various proceedings filed by both the parties against each other in respect of the estate of the said deceased husband of the petitioner are pending. The property forming part of the estate of the deceased husband of the petitioner who was father of the respondent is thus required to be protected. It is also not in dispute that both the parties have filed their respective caveats in the testamentary petition filed by each other.

32. Learned counsel for the petitioner strongly placed reliance on section 180 of the Indian Succession Act, 1925 and would submit that the respondent has not elected to dissent from the bequest made by the deceased husband of the petitioner in the Will propounded by the respondent himself and has filed the testamentary petition *inter-alia* praying for probate of the said alleged Will in *toto*. The respondent has thus admitted the ownership of the deceased husband and father of the respondent in the testamentary petition filed by himself and thus cannot be allowed to urge that he has any right of any nature whatsoever to run the said hotel business during the pendency of the testamentary petition filed by both the parties. She submits that the respondent similarly cannot claim any ownership in any of the properties bequeathed by the said deceased, including Amardeep Hotel business in view of the respondent not having challenged any portion of the Will propounded by him.

33. Mr.Omprakash Pandey, learned counsel appearing for the respondent on the other hand submits that his client has also filed a separate testamentary petition in respect of the later Will propounded

by his client which was executed by the deceased husband of the petitioner and the father of the respondent. He submits that his client is the only son of the said deceased testator who has been carrying on the said Hotel business for last more than two decades. He submits that the petitioner is on the contrary only a house wife and has no knowledge or experience of conducting the hotel business. He submits that admittedly the petitioner has been staying with the respondent in the same flat. The respondent has been looking after the petitioner exclusively.

34. It is submitted that the father of the respondent was paralyzed in the year 2007 and since then his movement was totally restricted. He was not able to look after the business and thus the entire hotel business was looked after exclusively by the respondent. Learned counsel for the respondent invited my attention to the order dated 21st April, 2018 passed by Shri Justice S.J. Kathawalla recording the statement made by the respondent that the divorce petition between the respondent and his first wife was only a paper decree. The respondent has denied the divorce with his first wife. He submits that several proceedings are also filed by his client so as to protect the estate of the deceased father.

35. It is submitted by the learned counsel that though under the Will propounded by his client, Amardeep Hotel business and the property is exclusively given to the petitioner by the deceased father of the respondent since it has been provided that after the demise of the petitioner, the said property would come to the respondent, the

respondent is entitled to protect the said property by carrying on business even during the life time of the petitioner. Learned counsel submits that this Court may direct the respondent to pay reasonable amount to the petitioner. He submits that his client has been already paying a substantial amount to the petitioner but is not able to produce any proof in respect of such payment.

36. Ms.Thadani, learned counsel for the petitioner in rejoinder submits that the respondent has not been paying any amount to the petitioner as falsely alleged by the respondent and on the other hand has been spending lavishly substantial amount out of the income generated from the hotel business. She submits that her client may be appointed as an Administrator in respect of said hotel business. She can take assistance of a Manager or any other competent person to assist her for conducting the said hotel business. She further states on instructions that her client is ready and willing to pay the amount bequeathed in the Will propounded by the petitioner to the respondent per month out of the income generated from the hotel business without prejudice to her rights and contention. She submits that the said hotel business which is forming part of the estate of the deceased has to be protected and cannot be allowed to be wasted. She submits that even if the argument of the respondent is accepted that the respondent would be entitled to run the hotel business after the demise of the petitioner, on that ground the respondent cannot be allowed to run the hotel business even during the life time of the petitioner. She submits that this is a fit case for appointment of an Administrator by exercising the powers under section 247 of the Indian Succession Act, 1925 by this

Court.

REASONS AND CONCLUSIONS :-

37. A perusal of the record indicates that the petitioner has filed a petition bearing Testamentary Petition (L) No.971 of 2018 for Letters of Administration on 21st March 2018 in respect of the registered Will of the deceased dated 29th January 2014.

38. It is not in dispute that prior to the date of execution of the said alleged Will dated 29th January 2014, the petitioner and the said deceased had already filed a suit against the respondent herein for various reliefs in respect of the hotel business. This Court has already granted interim relief in the said suit against the respondent. The respondent had filed a caveat in the said Testamentary Petition (L) No.971 of 2018 and as a result thereof, the said testamentary petition is converted into as a testamentary suit. There is also no dispute that the respondent had propounded a separate alleged Will dated 12th April 2017 of the said deceased and has filed Testamentary Petition No.2458 of 2017 seeking Probate of the said purported Will dated 12th April 2017. In view of the caveat and affidavit in support of the caveat filed by the petitioner and daughter of the petitioner and the said deceased, the said testamentary petition has already been converted into a Testamentary suit.

39. In so far as the alleged Will propounded by the petitioner is concerned, in so far as the immovable properties i.e. M/s.Hotel

Amardeep is concerned, in the said alleged Will, the said deceased bequeathed the said property in the name of the petitioner and the respondent jointly. It was however mentioned in the said alleged Will that management of the said hotel Amardeep will remain with the petitioner and the respondent shall not interfere with the management looked after by the petitioner.

40. In so far as the alleged Will dated 12th April 2017 propounded by the respondent is concerned, it is provided in the said alleged Will that as on the date of the said alleged Will, the respondent was conducting and managing all the affairs of the said Hotel Amardeep, Lodging Boarding and Restaurant and Bar and all income generating from the said hotel shall belong to the respondent. It is further provided in the said alleged Will that after demise of the said deceased i.e. husband of the petitioner and the father of the respondent, no one else shall have any right, title, interest, claim or demand whatsoever on the assets mentioned in the said alleged Will or properties, all the rights, absolute power and complete authority on those assets or in any other property which may be substituted in their place or places which may be acquired or received by the deceased after the date of execution of the said alleged Will were given, devised and bequeathed to the petitioner absolutely forever and in case of her demise, the respondent shall have power to deal or dispose of the said properties.

41. A perusal of the said alleged Will propounded by the respondent himself thus would prima facie indicate that after demise

of the said deceased, husband of the petitioner, various properties including the said hotel Amardeep, Lodging Boarding and Restaurant and Bar was bequeathed in favour of the petitioner absolutely forever and only in case of her demise, the respondent shall have power to deal and dispose of the said properties. A perusal of the averments made in the Testamentary Petition No.2458 of 2017 filed by the respondent inter alia praying for Probate of the said alleged Will dated 12th April 2017 of the said deceased, husband of the petitioner and the father of the respondent clearly indicates that the respondent has admitted in paragraph 6 of the said petition that all the property and credits which the deceased had possessed of or was entitled to at the time of his death which had or were likely to come to his hands and the petitioner has truly set forth in Schedule I appended to the said testamentary petition. Schedule I annexed to the said testamentary petition filed by the respondent includes the immovable property consisting of structure lying at 12/A, Evergreen Building, 3rd Road, Khar (West) Mumbai – 400 052 from which the business of Hotel Amardeep, Lodging Boarding and Restaurant and Bar is being carried out and the said property is shown as self occupied and did not fetch any rent. The value of the said property shown in Schedule I is at Rs.5 crores.

42. Learned counsel for the respondent during the course of the arguments in this Misc. Application vehemently urged before this Court that under the said alleged Will propounded by his client, the respondent would be permitted to deal with and dispose of the aforesaid property on which the said Hotel Amardeep, Lodging

Boarding and Restaurant and Bar was being run, after the demise of the petitioner. It was also vehemently urged by the respondent that the petitioner is housewife and has no experience of running a hotel. It is disputed by the learned counsel for the respondent that in the Will propounded by his client, the ownership right in respect of the said Hotel Amardeep, Lodging Boarding and Restaurant and Bar in which the said hotel business was run is not bequeathed in favour of the respondent but has been bequeathed in favour of the petitioner absolutely.

43. The petitioner has vehemently urged before this Court that the respondent has been exclusively running the said hotel business though the respondent is admittedly not bequeathed the said property and that also excluding the petitioner. The petitioner has been depending on her daughter exclusively. It is also demonstrated by the petitioner from the statement of expenses produced by the respondent that large amount of the alleged expenses have been debited to the said hotel account under various heads. Lakhs of rupees have been alleged to have been paid by the respondent to the first wife of the respondent out of the income generated out of those hotel business. During the course of the arguments, learned counsel for the petitioner invited my attention to the decree of divorce passed by the Family Court, Mumbai at Bandra in Petition No.F-1727 of 2016 which was filed by the respondent jointly with Mrs.Parmeetkaur Supremo Inderjeet Chadha.

44. It was a joint petition under Section 13-B of the Hindu Marriage Act, 1955 requesting for divorce by mutual consent. It was mentioned in the said order and judgment dated 30th January 2017 that due to indifferent nature, views, ideas and temperaments etc. of the petitioners in the said petition, their matrimonial life was not happy. They started living separately since 2nd May 2015. It was further provided in the said judgment that the respondent herein had towards full and final settlement as alimony acquired during the marriage period and transferred by way of registered document in the name of the petitioner no.2 therein i.e. first wife (i) Gift Deed dated 27th May 2016 in respect of the Flat No.301 admeasuring 1335 sq.ft., Preetika Apartment, Saraswat Colony, Saraswat Road, Santacruz (West), Mumbai - 400 054, (ii) Sale Deed dated 17th October 2015 in “Lavdeep C.F.C. Building” consisting of ground plus third (part) floor totally admeasuring 436 sq.mtrs. and (iii) Sale Deed dated 16th December 2014 in respect of Flat No.3, admeasuring 213 sq.ft. Carpet equal to 255.6 sq.ft. Built Up equal to 23.75 sq.mtrs., Khar Sunrise HSG Society, ground floor, 5th Road, Khar (West), Mumbai - 400052.

45. The respondent herein also agreed to pay periodical maintenance of Rs.7 lakh per month by way of maintenance to the petitioner no.2 therein and children with further increase by Rs.1 lakh after every two years. It was further agreed that all additional expenses as regards the expenses amounting due to the further education and stay of the children required also would be paid by the respondent herein. The Family Court, Mumbai allowed the said

petition filed by the respondent with his wife jointly for mutual divorce.

46. The respondent however made a statement before this Court on 21st April 2018 in the Notice of Motion (L) No.906 of 2018 in Suit No.423 of 2014 which was filed by the petitioner and her deceased husband that divorce between the respondent and his ex-wife Parmeetkaur was only on paper. In the affidavit-in-reply dated 26th June 2008 filed by the respondent in Chamber Summons (L) No.577 of 2018 in Suit No.423 of 2014 also, the respondent once again made a statement on oath that decree of divorce between the respondent and the said Mrs.Parmeetkaur was only a paper decree. Similar statements are made by the learned counsel for the respondent during the course of his argument in this notice of motion that no reliefs on the basis of the said decree passed by the Family Court can be pressed since the said divorce decree is only a paper decree and neither enforceable nor enforced. It is also the case of the respondent that the respondent has already married Ms.Sonudevi Bholanath Pandey within 14 days of the decree of divorce passed by the Family Court i.e. on 14th February 2017 and two children are born out of the said wedlock.

47. On one hand, the respondent has alleged that the said decree passed by the Family Court, Mumbai in the joint petition filed by the respondent with Mrs.Parmeetkaur granting divorce by mutual consent of parties was only a paper decree and on the other hand, has not disputed that substantial amounts are being paid to

Mrs.Parmeetkaur out of the income generated from the hotel business. Learned counsel for the respondent could not explain that decree passed by the Family Court granting divorce to the respondent and Mrs.Parmeetkaur by mutual consent was only a paper decree, why the respondent was required to pay Rs.7 lakh per month to Mrs.Parmeetkaur out of the income generated from the said Hotel Amardeep. It is thus clear beyond reasonable doubt that the respondent has been paying the substantial amount to Mrs.Parmeetkaur out of the income generated from the hotel business. The respondent could not point out any right to run the said Hotel Amardeep or to incur any such expenditure from the said income.

48. Learned counsel for the respondent could not produce any proof before this Court showing that any amount has been paid by the respondent to the petitioner from the income generated from the said hotel business.

49. A perusal of the said statement of account, even if accepted as true and correct, clearly shows that large amounts have been withdrawn by the respondent from the said hotel business towards personal expenses of the respondent. In my prima facie view, since even according to the respondent, the respondent would have right, if any, in the said hotel Amardeep, Lodging Boarding and Restaurant and Bar, only after demise of the petitioner, the respondent cannot be allowed to carry on such business and to misappropriate, mishandle or to waste the estate of the said deceased for his personal gain. Even if the argument of the respondent is accepted on the basis

of the alleged Will propounded by the respondent, he may claim right to deal with or dispose of the said property in which the said business in the name of Amardeep, Lodging Boarding and Restaurant and Bar is being run after demise of the husband of the petitioner. Since the petitioner herself is alive, the respondent cannot be allowed to run the said business during the lifetime of the petitioner. In my view, Ms.Thadani, learned counsel for the petitioner is right in her submission that the respondent has not exercised his right to dissent any portion of Will propounded by him under Section 180 of the Indian Succession Act, 1925.

50. A perusal of the record further indicates that it is the case of the petitioner that about one month prior to the demise of the husband of the petitioner and during the period when the husband of the petitioner was seriously ill in the month of March 2017, the said Mrs.Parmeetkaur obtained a Gift Deed fraudulently from the petitioner in favour of grand-daughter in respect of the flat in “Kusum Villa” from where the applicant was getting rent. It is also the case of the petitioner that on the same day i.e. 18th March 2017, the said Mrs.Parmeetkaur fraudulently obtained another Gift deed from the petitioner in her favour in respect of Flat No.302 which was owned by the petitioner. The petitioner thereafter applied and obtained for copies of Gift Deed on 2nd November 2017 under the provisions of Right to Information Act, 2005 and has already filed a Civil Suit bearing (L) No.539 of 2018 on 20th April 2018 challenging the said two Gift Deeds.

51. By an order dated 21st April 2018 passed by this Court in Notice of Motion (L) No.1030 of 2018 in Suit No.423 of 2014 filed by the petitioner, this Court has already granted injunction against Mrs.Parmeetkaur and Hasmeet from creating any third party rights in the flats allegedly gifted to them till the hearing and final disposal of the said suit. This Court has also passed an order of status-quo in respect of Flat No.302 at Preetika Apartment. The testamentary petitions which were already converted into testamentary suits filed by both the parties propounding separate Wills are pending. The rival contentions of the parties in both the suits regarding the alleged validity of the Will propounded by each other would be considered in those proceedings. Various proceedings filed by the parties against each other in respect of the properties in question are also pending. This Court in the case of ***Shernaz Faroukh Lawyer & Anr. Vs.Manek Dara Sukhadwalla & Anr., 2014 (2) Bom.C.R. 591*** has considered a similar situation where both the parties had propounded different Wills and both the proceedings were pending. One of the parties however who was claiming to be a caretaker, was misappropriating, mishandling and was wasting the estate of the deceased for his personal gain. This Court having recorded such prima facie finding, appointed an administrator in respect of the properties of the deceased which was misappropriated, mishandling and wasted by such party, though his separate petition for grant of probate was also pending.

52. This Court in the said judgment held that in such a situation, properties of the estate of the deceased has to be protected and an administrator deserves to be appointed under Section 247 of

the Indian Succession Act, 1925. The principles of law laid down by the learned Single Judge of this Court in the case of ***Shernaz Faroukh Lawyer & Anr. Vs. Manek Dara Sukhadwalla & Anr. (supra)*** clearly applies to the facts of this case.

53. Appeal filed against the said judgment in the case of ***Shernaz Faroukh Lawyer & Anr. Vs. Manek Dara Sukhadwalla & Anr. (supra)*** by the defendant therein also came to be rejected by a detailed judgment rendered by this Court in Appeal (L) No.7 of 2014 reported in ***2014 SCC OnLine Bom 847***. This special leave petition against the said judgment is also dismissed.

54. This Court with a view to test bona fides of the respondent asked the learned counsel for the respondent to take instruction whether a reasonable amount would be paid to the petitioner without prejudice to the rights and contentions of the petitioner, considering the substantial income from the hotel business, learned counsel for the respondent, on instructions from his client, refused to agree to the said suggestion. Mrs. Thadhani, learned counsel for the petitioner, on instructions from her client, submits that her client would be able to run the said hotel business by appointing a manager and looking after the said business herself. Statement is accepted.

55. In my view, the petitioner has thus made out a case for her appointment as an administrator in respect of the estate of the deceased late Mr. Amardeep Singh Sujjan Singh Chadha, with all rights and powers of a General Administrator subject to the control of this

Court including the control of the hotel business run in the name of Amardeep, Lodging Boarding and Restaurant and Bar with power to run the said business.

56. I therefore pass the following order :-

(i) The respondent is directed to hand over the possession of all assets in custody of the respondent including the said property on which the said hotel in the name of Amardeep, Lodging Boarding and Restaurant and Bar is being run by the respondent and all the licenses and other permissions obtained or existing in respect of the said hotel business to the petitioner within four weeks from today.

(ii) It is made clear that the petitioner would be allowed to conduct the said hotel business in the name of Amardeep, Lodging Boarding and Restaurant and Bar herself with the assistance of appropriate number of staff members including a manager.

(iii) The petitioner shall maintain the accounts in respect of the said hotel business and shall file the accounts every six monthly. The respondent would be at liberty to obtain a copy of such statement of account from the office of the learned Prothonotary and Senior Master upon payment of requisite photocopying charges,

if any.

(iv) The respondent shall not obstruct the petitioner from carrying on the said hotel business in the name of Amardeep, Lodging Boarding and Restaurant and Bar in any manner whatsoever. The petitioner would be at liberty to seek appropriate directions from this Court if and when any need so arise.

(v) The petitioner would be at liberty to open a bank account in the name of “Administrator, estate of Mr.Amardeep Singh Sujan Singh Chadha” and can operate the said account in the name of the estate of the deceased and to run the said hotel business in the name of Amardeep, Lodging Boarding and Restaurant and Bar.

(vi) The respondent shall furnish a list of sundry debtors and creditors in respect of the said hotel business till the date of the respondent handing over the charge and control of the said business to the petitioner within four weeks from today.

(vii) In so far as the liability of the said hotel business is concerned, the petitioner to obtain further directions from this Court by issuing a notice upon the respondent's advocate in advance.

(viii) Misc. Petition is made absolute in aforesaid terms. No order as to costs.

(ix) Parties to act on the authenticated copy of this order.

(R.D.DHANUKA, J.)