

Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1649 OF 2019

IN

SUIT NO.924 OF 2019

Nikhil Pramod KariaApplicant-Plaintiff

V/s.

Vijay Pramod Karia and Ors.Defendants

Mr. Karl Tamboly, with Mr. Samsher Garud, Bijal Gandhi, Mr. Harsh Moorjani, i/by Jayakar & Partners, for the Applicant-Original Plaintiff.

Mr. Venkatesh Dhond, with Dr. Sujay Kantawala, Ms. Teresa Daulat and Ms. Priyanka Gidh, i/by TRD Associates, for Defendant Nos.1 and 5.

Mr. Biju Joseph, with Ms. Pallavi Kamath, i/by B.J. Law Officos L & P, for Defendant No.2.

Mr. Sharan Jagtiani, with Ms. Shweta Sangthani, i/by Ms. Sneha Sanap, for Defendant No.3.

CORAM : A.K. MENON, J.

DATED : 7TH AUGUST, 2019.

P.C. :

1. Heard learned counsel for the parties.
2. This notice of motion seeks (i) appointment of the Court Receiver of the estate of the deceased; (ii) a direction to provide accounts and inventory of the assets (movable and immovable) and; (iii) in the meantime, temporary or permanent injunction restraining the defendant nos.1, 2 and 5, their successors and assignees, from creating third party rights in the estate, which

includes shares of defendant no.3-company and a flat situate at Breach Candy, Mumbai and; (iv) in the meantime, to disclose on oath the extent of the estate.

3. On behalf of defendant nos.1 and 5, Mr. Dhond, learned Senior Advocate, submits that a Will dated 27th September 2009 has been left behind by the father of the plaintiff and Will dated 10th May 2007 has been left behind by the mother of the plaintiff.

4. As far as the Will left behind by the deceased father of the plaintiff is concerned, Mr. Dhond states a probate petition is being filed in this court today and that a petition in relation to the Will of the deceased mother of the plaintiff will be filed within four weeks from today.

5. As far as the estate of the deceased is concerned, the prime consideration today, as far as the plaintiff is concerned, is his apprehension that the flat referred to in prayer clause (e) of this notice of motion may be alienated or disposed. It is submitted by Mr. Dhond that the said flat has already been dealt with and transferred to the name of defendant no.5, being the nominee. As regards the apprehension that the said flat may be disposed is misplaced. Mr. Dhond states that the said flat is the residence of defendant nos.1 and 5 and they have no intention of disposing the flat. In the event, the defendant nos.1 and 5 intend to do so, four clear weeks' notice will be given to the plaintiff.

6. Likewise, in respect of the shares held by the defendant no.1 forming part of the estate of the deceased, the defendant no.1 has no intention of disposing these shares and in the event the defendant no.1 desirous of doing so, he will not initiate any action to transfer the shares, save and except in compliance with the award passed on 7th January 2019 in Arbitration Petition No.442 of 2017 [*Prysmian Cavi E Sistemi S.r.l. Vs. Vijay Karia and Others*].

7. Defendant no.1 shall file an affidavit disclosing on oath the assets forming part of the estate of the deceased as on date of demise and if any of them have been dealt with, all particulars of such dealing shall be furnished in the affidavit.

8. A separate affidavit in relation to the estate of the deceased father shall be filed within two weeks from today and that of the deceased mother shall be filed within six weeks from today.

9. In view thereof, nothing survives in this notice of motion and the same is disposed in the above terms. In the event, the plaintiff receives notice of the defendants' intention to dispose any of the assets, liberty to apply.

10. The notice of motion is disposed in the above terms. Suit be placed for directions after six weeks.

(A.K. MENON, J.)