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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 285 OF 2021
IN
TESTAMENTARY PETITION NO. 1090 OF 2018**

Anupam Apartment CHS Ltd & Anr	...Petitioners
<i>Versus</i>	
Anil Kumar Keshavji Kanani & Ors	...Respondents

Mr RA Shaikh, i/b Anupam R Sharma, for the Petitioners.
Mr Laxminarayan Shukla, for the Respondents.

CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 9th April 2021

PC:-

1. Heard through video conferencing.
2. The Application will have to be allowed. It is filed by a Cooperative Society and a Developer. These are the two Applicants. The prayers in the Application are these:

“(a) That this Hon’ble Court be pleased to appoint an officer of this Hon’ble Court to execute an agreement for providing Permanent Alternate Accommodation in respect of flat No. 202, 2nd Floor, Anupam Apartment, Opp. Rationing Office, Malad (West), Mumbai 400 064, which is

standing in the name of the deceased Prabhudas Dwarkadas Chandrana a draft of which enclosed here with and marked **Exhibit B**.

(b) That Petitioners Nos. 1 and 2 and/or Respondents No. 1 to 5 and/or any one of them who is in possession of the keys of the flat be directed to handover keys of the said Flat No. 202 to Applicant No. 1 society for the purpose of Redevelopment of the said building by Applicant No. 2 DGS Group.

(c) In the event, the keys of the said Flat No. 202 is not in possession of the Petitioners and/or Respondents in that event Applicant No. 1 be directed to open the said Flat No. 202 with the assistance of Keysmith in presence of the officer of this Hon'ble Court so appointed for the purpose, who shall make inventory of the movable articles lying in the said flat in presence of all the concerned parties or their representatives.

(d) That Applicant No. 1 Society be at liberty to hand over the possession of the said Flat No. 202 to Applicant No. 2 for the purpose of Redevelopment/Demolition etc. of the said building as per the Development Agreement between Applicant No. 1 and 2, a copy of which is enclosed herewith and marked **Exhibit A**.

(e) That Applicant No. 2 be directed to deposit in this Hon'ble Court all the benefits and entitlement in respect of the said Flat No. 202 as set out in Permanent Alternate Accommodation marked as **Exhibit B** and upon completion of Redevelopment Applicant No. 2 shall handover the keys of Permanent Alternate Accommodation in lieu of Flat No. 202 to the officer of this Hon'ble Court so that the keys of the said Flat NO. 202 be retained by this Hon'ble Court till the hearing and final disposal of the aforementioned petition which will be handed over to the successful party in

accordance with law after final disposal of the petition/suit.”

3. As I noted in my order dated 5th April 2021, the Plaintiffs and Defendants are in a contest over Flat No. 202, second floor in the society’s premises Anupam Apartments, Malad (West), Mumbai 400 064. This stands in the name of the deceased, Prabhudas Dwarkadas Chandrana. Neither the Plaintiffs nor the Defendants are willing to execute a permanent alternate accommodation agreement. The deceased did not execute it in his lifetime. The result of this is impasse is being felt by not only the developer but every member of the society because the entire development has been held up for this reason. The application is correctly placed saying that if the heirs of Prabhudas cannot agree between themselves on the execution of the permanent alternative accommodation agreement necessary to permit the redevelopment to continue, then a Court Officer may do so.

4. I do not think it is necessary to appoint a Court Receiver. That will add needless expense. The entire building is to be redeveloped. Neither the Plaintiffs nor the Defendants will be prejudiced by the following order. Indeed the interest of all parties will be fully protected and preserved pending the outcome of the Suit itself. Conceivably, their interest will not only be protected but will be greatly benefited because the redeveloped flat will be worth much more than the current flat.

5. There will be an order thus in terms of prayer clauses (a) to (e).

6. The Prothonotary and Senior Master will depute an Officer to execute the permanent alternative accommodation agreement required under prayer clause (a).

7. None of the Plaintiffs or the Defendants will obstruct the delivery. The flat itself is vacant and, therefore, is under lock and key. The representative of the Prothonotary and Senior Master is at liberty to remove the lock for the purposes of delivery of possession.

8. There will be a further order on this IA in the following terms. All amounts that were due to Prabhudas Chandrana, the deceased as a member of the 1st Applicant society, whether by way of transit rent, corpus or other benefits, on the same terms as other members of the Society, will be deposited with the Prothonotary and Senior Master. All those amounts will be invested by the Prothonotary and Senior Master in accordance with the usual practices of his office until final orders in the main proceeding.

9. As to possession of the redeveloped flat, once it is ready and the occupation certificate is received, the 1st and 2nd Applicants, namely, the society and the developer will request the Prothonotary and Senior Master to depute an officer of the Court to take possession of the flat. At that time, they are at liberty to apply for the appointment of the Court Receiver until disposal of the dispute between the Plaintiffs and Defendants in the Petition for Letters of Administration.

10. The Interim Application is disposed of in these terms with liberty to the society and the developer to apply.

11. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)