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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 1502 OF 2021

IN

SUIT NO. 398 OF 2013

Priti Tushar Shah & Alpa Hitesh Vora …Plaintiffs
Versus
Kalpesh Anantrai Mehta & Ors …Defendants

Mr Piyush Shah, *with Chirag M Unadkat, for Respondent No. 1 in IA/1502/2021 & Original Plaintiff in S/398/2013.*
Mr Sarosh Damania, *with Nishank Barolia, Afreen Shaikh & Prashant Nakti, i/b Legal Links Advocate & Associate, for the Applicants in IA/1502/2021 & Original Defendants Nos. 2 & 4.*
Mr Nirav Shah, *with Aakash Kothari, i/b Little & Co, for Defendant No. 1-mother.*
Mrs Rekha Rane, *IInd Assistant to the Court Receiver, is present.*

CORAM: G.S. PATEL, J
DATED: 22nd October 2021

PC:-

1. This order will finally bring these family disputes to a close. Far too much time has been lost already. The suit itself was disposed of by a consent order of 22nd December 2015, as I have noted in previous orders recently made. It is time now to bring finality and closure to these disputes.

RE: PAYOUTS TO THE THREE SISTERS

2. The Plaintiff ("**Kalpesh**") has handed over a demand draft drawn on HDFC Bank in favour of the Prothonotary and Senior Master in the amount of Rs. 1.50 Crores. This amount is to be encashed by the Prothonotary and Senior Master. It is not to be invested.

3. Two of the three sisters, namely, Alpa and Priti, have received 50% respective of their shares, i.e. Rs. 75 Lakhs each from the funds already in court with the Prothonotary & Senior Master. Another Rs. 75 Lakhs each to be remitted to their accounts by the Prothonotary and Senior Master from the funds in court.

4. The third sister, Rupa, was to receive an amount of Rs. 1.50 Crores from the funds available with the Prothonotary and Senior Master. That could not be done because some forms were not submitted in time. That process has now been completed. The Prothonotary and Senior Master will ensure that the transfer to Rupa (as per the account details in a previous order) is to be effected as soon as possible. Rupa's payment will be met by Kalpesh's deposit.

5. In any event, the transfers to all three sisters in their respective amount mentioned above are to be effected by 30th October 2021.

RE: JEWELLERY IN PNB LOCKERS

6. The jewellery in the Punjab National Bank has been valued by Mr Kamlesh Somani. It is of the amount now of Rs. 2.13 Crores. That valuation report is taken on record.

7. The share of the jewellery identified as the entitlement of the mother, Madhuben is of an estimated value of Rs. 51 Lakhs, more than the Rs. 35 Lakhs contemplated in the 2018 valuation report and in the previous order of the Hon'ble Mr Justice SJ Kathawalla of 22nd December 2015.

8. The distribution of jewellery from the Punjab National Bank lockers will have to be in the presence of an Officer of the Court Receiver. The Branch Manager is directed to render assistance and to act on production of an ordinary copy of this order.

9. The Court Receiver's costs, charges and expenses are to be paid by Kalpesh. A person of the Court Receiver has attended the Bank and will need to attend a second time.

10. All four children will pay an amount of Rs. 2,500/- each to the Court Receiver to be paid to the representative who attended the Bank.

11. The remaining jewellery is to be distributed and divided as provided in the 22nd December 2015 order between Madhuben and

Kalpesh. That matter has already been decided and cannot be re-visited.

12. The Court Receiver's Report is taken on record.

RE: MOTHER'S ENTTLEMENT TO INSURANCE POLICIES AND FIXED DEPOSITS

13. In addition, Madhuben (the mother of Kalpesh, Priti, Alpa and Rupa) is entitled to the policies and fixed deposits that are the subject matter of paragraphs 6 and 7 of my order dated 8th October 2021. That total amount is just in excess of Rs. 65 Lakhs.

14. This means that with the jewellery of about Rs.51 lakhs, Madhuben will have capital of roughly Rs. 1.16 Crores. This is hers to do with and use as she wishes without restrictions.

RE: RESIDENCE OF MADHUBEN:

15. The previous consent order of 22nd December 2015 of the Hon'ble Mr Justice SJ Kathawalla clearly said that Madhuben and Kalpesh would have an equal undivided share, right, title and interest in the Shanti Sadan Flat. That will continue.

16. It goes without saying that the arrears of maintenance for Shanti Sadan and monthly maintenance hereafter will be paid by Kalpesh exclusively.

17. I am making it clear that Madhuben is not under any compulsion to reside with Kalpesh in that flat. She is the mother of these four children and it is her right to go and reside with any of the four at any time. None of the four children is entitled or permitted to refuse to keep their mother with them as long as she wishes. This addresses the concern of her Advocate.

RE: MAINTENANCE, UPKEEP AND MEDICAL EXPENSES OF MADHUBEN

18. Madhuben is in Court. She is confined to a wheelchair and is in evident physical distress. Given her state of health, she obviously needs a great deal of medical care and attention.

19. I cannot accept the contention that since Madhuben has enough capital, her four children are absolved of their obligation to provide ongoing care or that they have no obligation to meet her expenses. These will only increase. It is the obligation of her four children to care for her in her old age. Indeed I would say that looking after an aged parent is not so much an obligation as it is a privilege. All four children will see it exactly like that. Madhuben is going to incur considerable expenditure on her upkeep and maintenance including her medical needs.

20. For the present, each of the four children is to pay Madhuben an amount not less than Rs. 20,000/- per month each towards her upkeep and maintenance. Madhuben is at liberty to apply to the

Court for increase in the amount at any time, if required. This arrangement will continue for the rest of Madhuben's lifetime.

RE: ANAND ASHRAM FLAT

21. This leaves the question of the Anand Ashram flat. Under previous orders of 2017, Rupa had given up her claim of Rs. 1.50 Crores in cash and sought the flat in lieu of cash. After the Covid outbreak, she has indicated her preference, and which I have previously noted, to take the cash payout instead and to relinquish her claim in the Anand Ashram flat.

22. In order to achieve this, Kalpesh has brought into Court this amount of Rs. 1.50 Crores. Consequently, the result is that the Anand Ashram flat will need to be transferred to Kalpesh's name. The reason is self-evident. It simply cannot be that Kalpesh has to raise the funds to pay Rupa's share of Rs. 1.50 Crores but yet does not get the one asset that was to go to Rupa in lieu of that amount of Rs. 1.50 Crores. This is a simple exchange transaction and nothing further needs to be discussed in this regard. The submission attempted on behalf of Alpa and Priti that Madhuben should continue to have her half-share in the Anand Ashram flat cannot be countenanced. If that is to be so, then Alpa, Priti and Madhuben must bring into court the amount of Rs.1.50 crores to pay off Rupa, which obviously they cannot do.

23. An appropriate Gift Deed has already been taken on record. It is required to be signed and executed in Court by Madhuben as the donor and Kalpesh as the donee. The Gift Deed is on a stamp paper. It will be executed in Court. Mr Shah will take the necessary appointment with the Sub-Registrar of Assurance to have the Gift Deed registered. A copy of this order may be forwarded to the Sub-Registrar so that an earliest possible appointment is taken to minimize inconvenience to Madhuben.

RE: ADDITIONAL POLICIES

24. There are in addition six separate LIC policies (not seven as incorrectly noted in paragraph 6 of the order dated 30th September 2021) roughly in the amount of Rs. 29.47 Lakhs. Mr Shah states that these should be transferred or gifted to Kalpesh by Madhuben though she can have the income.

25. I find no explicit direction to this effect in the order dated 22nd December 2015. I have no reason to hold that these policies should not be available to Madhuben in her lifetime. If they are transferred to Kalpesh, she will not get the benefit of the income as the dividends or interest payouts will be credited directly to the account of the holder/transferee (Kalpesh). That is unacceptable. In her lifetime, Madhuben is entitled to more and cannot be ordered to make do with less. These policies will remain as they are so that Madhuben is entitled to the entirety of the income.

RE: EXPLANATION OF ORDER TO MADHUBEN

26. Madhuben is in considerable agitation. At her age, I cannot make more demands of her. She speaks and understands Gujarati. On my instructions, my Associate has explained this order and previous orders to her in detail and told her what has been done. He reports that she complained against all four children, saying that they had done nothing but trouble her for the last seven years. She was very anxious about having her own capital to her own name. She has been reassured of this. My Associate reports that is particularly glad that I have made an order giving her the complete choice of where she wants to reside, when, with whom and for how long, and that I have ensured that all four children must credit to her account a minimum of Rs.20,000 per month each. She was understandably concerned about her health and well-being. She has conveyed to my associate that this order allays her concerns. She has liberty to apply to court.

GENERAL

27. Once this is complete, the Contempt Petition and IA will come to an end. The Suit was already disposed of by the order of 22nd December 2015 of the Hon'ble Mr Justice SJ Kathawalla.

28. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)