

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
TESTAMENTARY & INTESTATE JURISDICTION
NOTICE OF MOTION NO. 124 OF 2019
IN
TESTAMENTARY SUIT NO. 175 OF 2017
WITH
TESTAMENTARY SUIT NO. 175 OF 2017
IN
TESTAMENTARY PETITION NO. 1299 OF 2017**

R Sudha P Alias Sudha Seshagiri Rao	...Plaintiff
<i>Versus</i>	
Rashmi V Rao Alias Rashmi V Kallapur	...Defendant
<i>And</i>	
eClerx Service Ltd & Anr	...Respondents

Mr Vijay B Kulkarni, for the Plaintiff/Applicant.
Ms Rashmi Rao, Defendant-in-person.
Mr Inayat Ali HA Qureshi, i/b KK Associates, Respondent No. 2 –
IDBI Bank.

Atul G.
Kulkarni

Digitally signed by
Atul G. Kulkarni
Date: 2021.01.28
10:56:55 +0530

CORAM: G.S. PATEL, J
DATED: 27th January 2021

PC:-

1. The matter is placed at the instance of Defendant in this Testamentary Suit. The parties are related thus. The original Plaintiff, seeking Letters of Administration, is the mother-in-law of the Defendant. The Plaintiff seeks Letters of Administration to the property and credits of her late son who died, apparently while overseas. The Defendant lives in Karnataka. It is she who has had this matter placed. She claims that the pendency of this Notice of Motion filed by her mother-in-law, the Plaintiff, is being used to delay certain domestic violence proceedings that she, the Defendant, has initiated in the Courts in Karnataka. I am told that she has filed a writ petition or an appeal. She also claims that a residential flat has been sealed by the Sessions Court and, further, that the death benefits of her late husband have been validly attached by a Court in Dharwad in the hands of the 1st Respondent, former employer.

2. The Notice of Motion by the mother-in-law Plaintiff is far more ambitious than this. The 2nd Respondent to the Notice of Motion is IDBI Bank. Apparently it has a security over a residential flat which is said to be unused. This is the same flat that I referred to earlier. What the Motion seeks is that I should make an order restraining the secured creditor, IDBI Bank, from taking any further steps including to auction this flat. Such an order is inconceivable. IDBI Bank will be governed by the provisions of the SARFAESI Act. It is entitled to take those steps in accordance with law.

3. The next prayer is that the deceased's former employer, the 1st Respondent, be directed to pay an amount of Rs. 5,05,950/- or some other amount to the Respondent No. 2, IDBI Bank, to pay off the

home loan. No such order is possible in a Notice of Motion in a testamentary proceeding.

4. The third prayer, building on the previous two, is to demand that IDBI Bank issue a No Dues Certificate once it has received these funds. Again, that is not an order that this Court can make.

5. The next prayer is against the former employer to deposit the balance death benefits of the deceased with interest into the Court and upon that deposit being made an amount of Rs. 50,000/- per month be released to the Plaintiff, mother, for her monthly expenses. This also cannot be granted at this stage because if indeed those death benefits are already attached or are even a subject matter of a writ petition or an appeal where such an issue is under consideration then surely another High Court should not make an order that is possibly in conflict.

6. Consequently, there can be no order in terms of prayer clauses (a), (b) and (c) of this Notice of Motion. The Notice of Motion is dismissed as regards those prayers.

7. So far as prayers (d) and (e) are concerned, for the reasons already stated, no relief can be granted but I will grant the Plaintiff the liberty to make a fresh application limited to the prayers in prayer clauses (d) and (e) after the proceedings in Karnataka are resolved one way or the other.

8. The Notice of Motion is dismissed for these reasons, with the limited liberty as indicated above. In the facts and circumstances of the case, there will be no order as to costs.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)