

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**TESTAMENTARY SUIT NO. 107 OF 1998
IN
TESTAMENTARY PETITION NO. 953 OF 1998**

Meenal S. Vidya ... Plaintiff

Versus

Vandana Hari Kelkar ... Defendant

**WITH
TESTAMENTARY SUIT NO. 58 OF 2000
IN
TESTAMENTARY PETITION NO. 1031 OF 1998**

Vandana Hari Kelkar ... Plaintiff

Versus

Meenal S. Vidya ... Defendant

Mr. Swanand R. Ganoo i/b Puranik & Co. for the Plaintiff in TS/107/1998 and Defendant in TS/58/2000.

Mr. D.A. Athavale for the Defendant in TS/107/1998 and Plaintiff in TS/58/2000.

CORAM : R.I. CHAGLA, J.

DATED : 30th SEPTEMBER, 2022

ORDER :

1 The matter has been settled between the parties in the above Testamentary Suits.

2 The Consent Terms in Testamentary Suit No.107 of 1998 dated 27.09.2022 is taken on record and marked 'X' for identification.

3 The Consent Terms in Testamentary Suit No.58 of 2000 dated 27.09.2022 is taken on record and marked 'X-1' for identification.

4 The Consent Terms are duly signed by the Plaintiff and Defendant as well as Advocate for the Plaintiff and Advocate for the Defendant in both the Suits.

5 I am satisfied that the two Consent Terms are in order, not contrary to law and have been drawn up by the parties of their own volition in reflection of their true intentions.

6 The undertakings recorded in the Consent Terms shall be accepted as undertakings to the Court.

7 In the Consent Terms marked 'X' the Plaintiff has agreed to pay to the Defendant, a lumpsum amount of Rs.75,00,000/- in full and final settlement of all his claims in Testamentary Suit No.107 of 1998 and Testamentary Suit No.58 of 2000. The Defendant has agreed to unconditionally withdraw all his demands, claims, rights and interest in, to and upon the residential flat being Flat No.F/5, admeasuring about 523 sq. ft. (carpet) on the Second Floor of Building No.F in a building

known as 'Sahakar Niwas', Central Co-operative Housing Society Ltd., V.S. Agashe Path, Dadar (West), Mumbai 400 028. The mode of payment of settlement amount of Rs.75,00,000/- is provided in clause 4 of the Consent Terms marked 'X'. Sum of Rs.5,00,000/- has been paid at the time of execution of the Consent terms as well as sum of Rs.10,00,000/- by Demand Draft No.231218 dated 26.09.2022 at the time of filing of the Consent Terms. The balance amount of Rs.20,00,000/- is by way of post dated cheque No.431562 dated 31.10.2022 and balance sum of Rs.40,00,000/- is also by post dated cheque No.431563 dated 30.11.2022 payable respectively on 31.10.2022 and 30.11.2022. The above post dated cheques have been handed over by the Plaintiff to the Defendant in Testamentary Suit No.107 of 1998. The eventuality of dishonour of the post dated cheques have been mentioned in clause 6 of the Consent Terms. In Clause 7 of the Consent Terms the Defendant has confirmed the correctness and genuineness of the last Will and Testament of the deceased Umabai Nilkanth Kelkar dated 01.08.1997 and accordingly the Defendant unconditionally withdraws all the alleged claims and contentions made by him in the Testamentary Suit No.107 of 1998. The Defendant records his unconditional consent for grant of the Probate/Letters of Administration to and in favour of the Plaintiff, as regards the said Will and Testament of the deceased and for the Probate/

Letters of Administration with Will annexed will be granted to and in favour of the Plaintiff with respect to the said Will and Testament of the deceased dated 01.08.1997. In view of the settlement arrived at and the consent of the Defendant to grant Probate/Letters of Administration with Will of the deceased in favour of the Plaintiff, the caveat filed in Testamentary Suit No.107 of 1998 stands discharged.

8 Testamentary Suit No.107 of 1998 is disposed of in terms of the Consent Terms.

9 In view of disposal of the Testamentary Suit, Testamentary Petition No.953 of 1998 shall be processed by the Testamentary Registrar for grant of probate in favour of the Petitioner.

10 Insofar as the Consent Terms marked 'X-1' is concerned, permission has been sought to withdraw Testamentary Suit No.58 of 2000, in view of the settlement arrived at between the parties as recorded in the consent Terms dated 27.09.2022 marked 'X' in Testamentary Suit No.107 of 1998. The withdrawal of Testamentary Suit No.58 of 2000 is unconditional.

11 Accordingly, the Testamentary Suit No.58 of 2000 and the Testamentary Petition No.1031 of 1998 are disposed of as withdrawn.

12 Drawn up decree/ order in the above Testamentary Suit No.107 of 1998 is dispensed with unless the parties seek drawn up decree/ order, in which case they are entitled to apply.

13 A soft copy of the Consent Terms marked 'X' and 'X-1' will be uploaded as the second order in the matter.

14 The Registry is to ensure that the hard copy of the signed Consent Terms marked 'X' and 'X-1' is permanently retained on file as part of the record and is not sent for destruction in the ordinary course.

15 Court fees are to be refunded in Testamentary Suit No.58 of 2000 in Testamentary Petition No.1031 of 1998 in accordance with the Rules. For the purposes of Section 43 of the Maharashtra Court Fees Act and the proviso to that Section, today's date is the date of making a claim for repayment. The Prothonotary & Senior Master will issue a certificate for a refund of Court Fees computed according to the Rules. He will act on production of an authenticated copy of this order without requiring a separate application.

(R.I. CHAGLA, J.)