IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1590 OF 2017
IN
APPEAL NO.332 OF 2016

1. Abha Dastane-Rao	]
2. Sucheta Narayan Dastane ***(Deleted)***	].. Applicants-Appellants
Vs.	
1. Prabhakar Deolankar	]
2. Vibha Jaysinghe	]
3. Dr. Shubhada Mithilesh	]
Through Power of Attorney – Dinesh D. Barve	]
4. Maharashtra Executor and Trustee Company P. Ltd.	].. Respondents

Ms. Abha Dastane-Rao, the Applicant-Appellant, is present in person.
Mr. S.N. Chandrachud for Respondent No.1.
Mr. Hemant Ghadigaonkar for Respondent Nos.2 and 3.
Mr. Pramod Pawar for Respondent No.4.

CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, J.J.

DATE : 28TH SEPTEMBER, 2022.

P.C. : { Per Valmiki SA Menezes, J. }

1. This Notice of Motion is filed at the behest of the appellant in Appeal No.332 of 2016, inter alia, seeking directions from this court to appoint a Forensic Auditor to conduct forensic audit of the assets and accounts of the estate of late Dr. Narayan Ganesh Dastane, who passed away on 26th April

2006, leaving a bequest through a Will dated 25th April 2006. The Will was subjected to a probate petition, wherein the respondent no.1-Prabhakar Deolankar was appointed as Executive of the Will, who, in turn, delegated his powers as executor of the said Will, to respondent no.4-Maharashtra Executor and Trustee Co. Pvt. Ltd. through a Power of Attorney. The other respondents are legatees under the said Will.

2. Appeal No.332 of 2016, in which this notice of motion has been filed, impugns the judgment dated 17th February 2015 of a learned Single Judge of this court in Miscellaneous Petition (Lodging) No.98 of 2015, which has been filed under Section 301 of the Indian Succession Act, 1925, seeking removal of the first respondent – Prabhakar Deolankar as Executor of the Will dated 25th April 2006. The said Petition, under Section 301 of the Act, was dismissed. Pending the hearing of the intra court Appeal before us, the applicants have moved the present Notice of Motion for appointment of a Forensic Auditor.

3. While perusing the record of the Appeal and the Notice of Motion, we have taken note of several orders passed in the proceedings by various Benches that have take up this matter for hearing, the synopsis of which records as under :-

(a) By order dated 3rd October 2017, the matter was directed to be removed from the board at the request of applicant no.1, who appeared in person;

(b) By order dated 19th October 2018, the appellant no.1 in Appeal No.332 of 2016, who appeared in person, was not allowed to plead on behalf of the second appellant in her capacity as the Constituted Attorney of the second appellant and was consequently directed to either transpose the second appellant after notice to her or that the second appellant would have to apply for leave of the court for permitting the first appellant to plead on her behalf; the matter was adjourned at the behest of the first appellant, who sought time on that day.

(c) By order of 23rd January 2019, the final hearing of the Appeal was directed to be expedited and the request of the petitioner in person for a fixed date in the subsequent month was rejected.

(d) By order dated 8th June 2022 passed by a Division Bench comprising of K.R. Shriram and Prithviraj K. Chavan, J.J., the registry was directed that the matter should not be placed before that Bench.

(e) By order dated 8th July 2022, the Division Bench comprising of R.D. Dhanuka and M.G. Sewlikar, J.J. heard the Notice of Motion and considering the names of various Forensic Auditors tendered by the applicants;

at the behest of the applicants, the Auditor - Mukund Chitale & Co. was shortlisted by the court; it is noted in the said order that, according to the note submitted by the applicant no.1-Abha Dastane-Rao, who appeared in person, the applicant desired to assist the said auditor on its appointment by the court. In terms of the said order, the applicant vehemently urged that without her assistance to the auditor that would be appointed by this court, the auditor would not be able to submit a report. That submission of the applicant was vehemently opposed by the counsel for respondent no.1, stating that though his client had no objection to the appointment of the Forensic Auditor by the court, the applicant cannot be allowed to assist the Forensic Auditor and, instead, respondent no.4 may be permitted to provide such documents and information, which may be called for by such auditor. It was further noted in the said order that before going into issue whether the Forensic Auditor could be appointed, it was found appropriate to ascertain from Mukund Chitale & Co. whether it was agreeable for appointment as Forensic Auditor, as prayed for in the notice of motion, and accordingly, this court has directed Mukund Chitale & Co. to submit a reply to such requisition. In paragraph 10 of the said order, that Bench noted that though the matter was heard on several occasions and orders were passed after hearing the applicant at length, the applicant continued to argue the matter and was unable to maintain decorum in the court, though repeatedly warned by the court; accordingly, directions were issued to the registry not to place the notice of motion before a bench of which R.D. Dhanuka, J. or M.G. Sewlikar, J. was member.

4. M/s. Mukund M. Chitale & Co., by its letter of 26th July 2022, submitted to the registry of this court that it has consented to be appointed as a Forensic Auditor in the present matter. However, it has recorded its financial terms in the said letter for undertaking the forensic audit and, as set out therein, the modalities of payments to be made to it as also the scope of its work.

5. Copies of the letter dated 26th July 2022 were circulated by us through counsel for all the parties and to the applicant no.1, who appeared in person. Upon perusal of the said letter, applicant no.1 submitted before us that since the forensic audit is at her behest and to ascertain allegations made by her in the Notice of Motion and in the Appeal, she will bear the entire cost of the forensic audit, to be paid by her to M/s. Mukund M. Chitale & Co., Chartered Accountants.

6. During the course of hearing of the Notice of Motion, all parties undertook to assist the auditors, on they being appointed, by agreeing to produce any documents or record in their possession, which may include (i) accounts, (ii) bank transactions, (iii) details of payments paid out from the estate of late Dr. Narayan Ganesh Dastane, (iv) details of receipt of income tax, (v) stocks, (vi) movable and immovable assets, which may be in their possession etc. The respondents have also reiterated before us that they do not oppose orders being passed appointing a Forensic Auditor to conduct forensic audit of the estate of late Dr. Narayan Ganesh Dastane, which is subject matter of the probate proceedings, but, however, respondent nos.1 to 3 maintained their opposition to the applicant being part of the investigation team that would conduct the forensic audit.

7. Considering the submissions made by the parties, we deem it fit to appoint M/s. Mukund M. Chitale & Co. as Forensic Auditor to conduct forensic audit of the estate left by late Dr. Narayan Ganesh Dastane. We do not find any cogent reasons borne out from the statements made in the Notice of Motion to grant reliefs in terms of prayer clauses (b) to (e), Accordingly, we pass the following order :-

(i) M/s. Mukund M. Chitale & Co., Chartered Accountants, having its address at the 2nd floor, Kapur House, Paranjape B Scheme, Road No.1, Vile Parle (East), Mumbai – 400 057, is appointed as Forensic Auditor to conduct forensic audit of the estate left by late Dr. Narayan Ganesh Dastane under the Will dated 25th April 2006, executed by him, which was subject matter of the probate proceedings.

(ii) The Auditors shall conduct forensic audit of all movable and immovable assets of the estate, all transactions that have taken place from the date of opening of the inheritance i.e. the date of demise of late Dr. Narayan Ganesh Dastane.

(iii) The Auditors shall investigate into all bank transactions including payments made out or amounts received from all bank accounts used by the Executors - respondent no.1 or respondent no.4 - during the pendency of the proceedings.

(iv) The Auditors may, if they so deem fit, call for all Books of Accounts, documents, details of transactions, details of movable and immovable assets, receipts of income, creation of debts or any investments that may have been made during the course of the probate proceedings and administration of estate of late Dr. Narayan Ganesh Dastane from any of the parties i.e. the Executor of the

Will - respondent no.1 and respondent no.4 - or any of the legatees under the Will.

(v) In the event the Auditor experiences any opposition or resistance to their request to any of these parties to produce such material, it may apply for necessary directions to the parties through this court.

(vi) While conducting the forensic audit, the Auditors shall consider the allegations made by applicant no.1 in this Notice of Motion and the accounts rendered by the respondent no.1 in the probate proceedings.

(vii) All parties to these proceedings are at liberty to place before the Auditor, at the Auditor's convenience, such material including written notes that they may deem necessary for assistance to the Auditor.

(viii) If the Auditor is desirous to meet the parties, it shall do so at such specific time and duration that the Auditor may allow to each of the parties.

(ix) Applicant No.1 is hereby directed to deposit an amount of Rs.3,00,000/- (Rupees Three Lakhs only) in such account of M/s. Mukund M. Chitale & Co., Chartered Accountants, as directed by them, as an advance for commencement of the forensic audit, which amount shall be adjusted against the final bill for services to be provided by M/s. Mukund M. Chitale & Co. for conducting the forensic audit at the behest of applicant no.1.

(x) Applicant No.1 shall clear all payments due on the final bill of the Auditor - M/s. Mukund M. Chitale & Co., Chartered Accountants, after adjustment of the advance amount paid, within one week of the Auditor raising its bill for services rendered.

(xi) In addition, prior to the Auditor commencing the forensic audit, the applicant no.1 is directed to deposit, by way of a Security Deposit, an amount of Rs.2,00,000/- (Rupees Two Lakhs only) with the Prothonotary & Senior Master of this court, which shall be held to secure full payment of the Auditors – M/s. Mukund M. Chitale & Co.

(xii) The said amount shall be refunded to applicant no.1 upon M/s. Mukund M. Chitale & Co. submitting to this court a note of full payment of its fees towards the services rendered.

(xiii) After completion of the forensic audit, the Auditors – M/s.

Mukund M. Chitale & Co. shall submit its report before this court.

(xiv) Place Appeal No.332 of 2016 on board for final hearing after receipt of report of the Auditors – Mukund M. Chitale & Co.

8. Notice of Motion is disposed accordingly.

[VALMIKI SA MENEZES, J.] **[DHIRAJ SINGH THAKUR, J.]**