

Sharayu Khot.

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

INTERIM APPLICATION NO. 1707 OF 2022

IN

MISCELLANEOUS PETITION NO. 93 OF 2015

Rajan Youraj Sawant & Anr.

...Applicants/
Petitioners

Versus

Mrs. Shilpa Youraj Sawant & Ors.

...Respondents

Mr. Rajesh B. Jain a/w Mr. Rohit Jain i/by Legal Juris for the
Applicants/Petitioners.

Mr. Sukruta Chimalkar i/by S.B. Prabhavalkar for the Respondents.

CORAM : R.I. CHAGLA J

DATE : 12 August 2022

ORDER :

1. Heard learned Counsel for the parties.

2. By this Interim Application, the Applicants are seeking
permission to withdraw the amounts lying deposited in this Court
pursuant to orders dated 23rd April 2015 and 29th June 2015 passed
in the Notice of Motion (L) No. 62 of 2015.

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3. In addition relief is sought for allowing the Applicants to use and occupy the residential flat namely, Flat A/9, situated in Neelesh Co-operative Housing Society, situated at A-1, Neelesh, Plot No. 142, Senapati Bapat Marg, Mahim, Mumbai – 400 016 with a direction to the office of this Court to handover possession of the said Flat to the Applicants herein along with the articles lying therein as the main door keys are lying in the office of this Court and for direction to the Respondents to handover the safety door lock keys. Further consequential relief is sought.

4. The Applicants are the Petitioners who had filed Miscellaneous Petition No. 93 of 2015 for revocation of the grant of Letters of Administration which had been granted by this Court to Respondent No.1 on 27th May 2011. It is the contention of the Applicants that the Letters of Administration was granted by this Court without citation having been served on the Applicants inspite of the Applicants being legal heirs of the deceased.

5. Further, grievance on the part of the Applicants is that the estate of the mother Smt. Suvarna Kumari Youraj Sawant was included in the schedule to the Petition and by which the Respondent

No.1 in collusion with the Respondent Nos.2 and 3 have fraudulently obtained the grant of Letters of Administration in respect of the estate of the deceased husband along with the estate of the deceased mother Smt. Suvarna Kumari Youraj Sawant without following due process of law.

6. The Applicants were minors on the date when the grant of Letters of Administration was issued by this Court.

7. The present Interim Application which has been filed, proceeds on the premise that by orders of this Court dated 23rd April 2015 and 29th June 2015, in the present proceedings, the Respondents had deposited a sum of Rs. 52,00,000/- in this Court to secure the interest of Applicant No.2 who was undisputedly the son of the deceased Youraj Fondu Sawant. Applicant had made out a prima facie case in the Notice of Motion (L) No.62 of 2015 that till the hearing of the Notice of Motion, the grant of Letters of Administration was required to be stayed. Accordingly, the Respondents were restrained from acting upon the grant and were to make relevant disclosure of the action and/or benefits taken by them, in respect of the estate of the deceased Youraj Fondu Sawant and

deceased Smt. Suvarna Kumari Youraj Sawant, pursuant to the grant issued on 27th May 2011.

8. By the subsequent order dated 29th June 2015, this Court had considered that an Affidavit had been filed by the Respondents making the relevant disclosures sought for in the Notice of Motion (L) No. 62 of 2015 and had found that complete and full disclosure had been made by the Respondents. The undertakings and assurances of the Respondent No. 1 have found to be eminently fair and reasonable as well as it was noted that the 1st Respondent had deposited an amount of Rs. 52,00,000/- with the Prothonotary & Senior Master, when the grant was issued towards the interest and share of the 2nd Applicant. Whether this amount is sufficient to cover his interest is a matter also to be decided at a later stage. For the present, the deposit was to continue. The undertakings of the 1st Respondent in the Affidavit dated 10th June, 2015 were accepted as undertakings to this Court. It was recorded that there was a serious dispute as to the identify of the 1st Applicant and the validity of his birth certificate annexed to the Revocation Petition. The Notice of Motion was accordingly, listed for hearing and final disposal with the observation that there had been complete compliance with the order

dated 23rd April 2015 regarding the order of disclosure. The relief granted in terms of prayer clauses (b) & (c) of the Notice of Motion was continued till final disposal of the Notice of Motion.

9. In the Affidavit in Reply filed in the present Miscellaneous Petition, the Respondents have stated that pursuant to the issuance of the grant, the Respondents had deposited 1/5th share of the Applicant No. 2 amounting to Rs. 52,00,000/- in three installments on 19th May 2011, 12th June 2012 and 3rd June 2013 with the Prothonotary & Senior Master. The said amount has been invested by the Prothonotary & Senior Master of this Court in the Fixed Deposit receipts of Nationalised Bank pursuant to order dated 28th March 2011.

10. The learned counsel for Respondent No.1 has stated that this Court has framed and settled the issues in the Revocation Petition on 18th April 2016. This Court had not granted any liberty to the Applicant to move the Court for seeking any further relief including permission to withdraw the amount deposited by the Respondents and/or allowing the Applicants to use and occupy the subject flat.

11. The Revocation Petition was filed in the month of April 2015 by Mrs. Remalli Sayamma in her alleged capacity as the legal guardian on behalf of the Applicants who were 17 years and 15 years at the time of filing the said Application. It is the contention of the Applicants that they have thereafter attained majority.

12. The Respondents have denied that the Applicants have no place to stay in Mumbai and that in any event, both the Applicants are permanent residents of Arevapet Gudivada, Krishna District, Andhra Pradesh.

13. Having considered the submissions of the learned Counsel for the parties as well as the averments in the pleadings, I find no merit in the present Miscellaneous Petition, particularly, considering that the Applicants/Petitioners have filed Revocation Petition seeking revocation of the grant of Letters of Administration issued by this Court on 27th May 2011.

14. The 1/5th share of the Applicant No. 2 amounting to Rs. 52,00,000/- in the estate of the deceased was secured by the 1st Respondent depositing the said amount in three installments way

back on 19th May 2011, 12th June 2012 and 3rd June 2013 with the Prothonotary & Senior Master of this Court, which has been invested in Fixed Deposit receipts of Nationalised Bank pursuant to order dated 28th March 2011. This Court has by its previous orders dated 23rd April 2015 and 29th June 2015 have fully protected the interest of the Applicants by restraining the Respondents from acting upon the grant of Letters of Administration as well as ensuring that full disclosures are made by the Respondents as well as undertakings not to deal with the estate of the deceased. The undertaking of the 1st Respondent is that no amounts belonging to the estate of the deceased have been withdrawn and they are invested in Fixed Deposit receipts of the concerned banks namely State Bank of India, and Bank of Hyderabad, Chembur Branch and which undertaking as well as full disclosure thereof has been given/made in the said Affidavit of the 1st Respondent in compliance with prayer clause (d) of the Notice of Motion (L) No. 62 of 2015 in Miscellaneous Petition (L) No. 703 of 2015. It has been recorded in the order dated 29th June, 2015 that the said Affidavit dated 10th June 2015 and disclosure made therein is in satisfaction of the order of this Court.

15. Considering that the Notice of Motion (L) No. 62

of 2015 in the Revocation Petition has been taken out by the Applicants and which Notice of Motions is to be heard finally, at this stage, the relief sought for by the Applicants cannot be granted. The Applicants' interest have been fully secured by this Court and would depend upon the outcome of the Revocation Petition as well as the Notice of Motion taken out therein. Further, this court has been satisfied that adequate disclosures have been made by the Respondents in the Affidavit dated 10th June 2015. Thus, I find no merit in considering the relief sought for in the Interim Application apart from there being a dispute insofar as the validity of the birth certificate produced by the Applicant No. 1 as to whether he was the son of the deceased. A birth certificate has been annexed to the Affidavit dated 10th June 2015 in Reply to the Miscellaneous Petition at Annexure A, wherein the name of the father of Applicant No.1 is not that of the deceased. Thus, relief sought for in Interim Application No. 1707 of 2022 is not granted.

16. Interim Application No. 1707 of 2022 is accordingly, disposed of.

17. Notice of Motion (L) No. 62 of 2015 shall be placed for hearing on 13th September 2022.

[R.I. CHAGLA J.]