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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO.5 OF 2023**

Mrs. Nikhat Naaz Rizwan Shaikh

...Petitioner

Mr. Pradeep J Ramchandani for the Petitioner.

CORAM : R.I. CHAGLA J.

DATE : 6 JULY 2023.

ORDER :

1. The Petitioner is seeking appointment as Guardian of the properties of the said minors, without security or remuneration with regard to the share of the minors in the property set out in Exhibit E to the Petition. The Petitioner has further sought permission to finalize and execute necessary Agreement / documents for sale for herself and for and on behalf of the minors with regard to Flat No.1801, 18th Floor, Brizo Residency, Shivaji Nagar Junction, Ghatkopar, Mankhurd Link Road, Govandi, Mumbai – 400 043 alongwith allotted car parking space No.1. Further, relief has been sought for permission to finalize and sign, execute and register necessary agreements / documents for purchase for herself jointly with her two minor sons namely Mast. Zaid, Mast. Zakariya, Flat No.1805, Brizo Residency, 18th Floor, Shivaji Nagar Junction,

Ghatkopar, Mankhurd Link Road, Govandi, Mumbai – 400 043 alongwith allotted car parking space. Further, relief is sought for permission to finalize and sign, execute and register necessary agreement / documents for purchase for herself jointly with her minor daughter Ms. Juveriya Naaz a Flat No.1806, 18th Floor, Brizo Residency, Shivaji Nagar Junction, Ghatkopar, Mankhurd Link Road, Govandi, Mumbai – 400 043 alongwith allotted Car parking space. Additional relief is sought for appropriating sale proceeds of Flat No.1801 in the manner mentioned in prayer Clause (f) of the Petition. This is towards balance consideration for purchase of Flat No.1805 and 1806 as well as other charges mentioned therein.

2. The Petitioner has stated that she has three minor children namely Mast. Zaid Rizwan Shaikh, Mast. Zakariya Rizwan Shaikh and Ms. Juveriya Naaz Rizwan Shaikh. The Petitioner is the widow of Late Mr. Rizwan Irshad Ahmed Shaikh. Relevant documents such as Aadhar Card and PAN Card are annexed to the Petition. Further, the relevant Aadhar Cards of the said minor children issued by the concerned authority is also annexed to the Petition.

3. The Petitioner has stated that her late husband expired

on 15th October, 2019 in Mumbai leaving behind the Petitioner and the said three minor children as his legal heirs and legal representatives. A copy of death certificate is annexed to the Petition.

4. The Petitioner has stated in paragraph 5 of the Petition that her late husband during his lifetime had purchased the property mentioned therein which includes the said flat No.1801, 1805 and 1806. The particulars of the purchase of the said Flat No.1805 and 1806 are provided in paragraph 5(ii) and (iii) to the Petition. Further, it is stated that the said Flat No.1801 was purchased by late Shri Rizwan Irshad Ahmed Shaikh by an Agreement for Sale dated 19th January, 2018 duly registered with the Sub Registrar of Assurance. Annexed at Exhibit D to the Petition is the copy of the Agreement for Sale of Flat No.1801. The Petitioner has further relied upon allotment letters of Flat Nos. 1805 and 1806 as and when produced.

5. The Petitioner has stated that for the balance payment of the said Flat Nos.1805 and 1806, the Petitioner sold her ownership Flat No.1802, 18th Floor, Brizo Residency, 18th Floor, Shivaji Nagar Junction, Ghatkopar, Mankhurd Link Road, Govandi, Mumbai – 400 043 which is standing in the sole name. The Petitioner has further

stated that she paid balance payments of Rs.19,60,906/- for Flat No.1805 and Rs.21,60,906/- for Flat No.1806 and took possession thereof. The Petitioner has craved leave to refer and rely upon bank passbook and receipts of the said payments made for the said Flat Nos.1805 and 1806 respectively.

6. The Petitioner has further stated that she has requested the builders to execute and register necessary Agreements for purchase of Flat No.1805 and 1806 in the respective names of the said minors jointly with the Petitioner mentioned in paragraphs 8 and 9 to the Petition.

7. The Petitioner has accordingly stated that she is desirous of selling Flat No.1801 and her right, title and interest and share in the said property together with the right, title and interest and share of all her three minor children through the Petitioner upon her being appointed as their natural guardian, being their mother. The Petitioner has stated that she requires the funds for payment of stamp duty and registration charges for Agreement for purchase of Flat Nos.1805 and 1806 as well as brokerage for sale of Flat No.1801 and also for the education, maintenance and upbringings of her said three

minor children.

8. The Petitioner has made out a case for appointment of herself as guardian in paragraph 12 of the Petition, wherein she has stated that the said three minor children are living with and under the natural care and custody of the Petitioner. They are being properly looked after and well maintained solely by the Petitioner who is the biological mother of all the three minors. The Petitioner has further stated that she is a fit and proper person for being appointed as a Guardian of the property of the said three minors and that she is ready and willing to act as guardian of the three minors without security remuneration or royalty. Accordingly, the present Petition be allowed.

9. I have considered the averments in the Guardianship Petition, and noted that the Petitioner is the mother of the said three minors and that her husband Late Mr. Rizwan Irshad Ahmed Shaikh expired on 15th October, 2019. Further, the aforementioned flats were purchased by her late husband and that relief with respect to the aforementioned flats requires to be granted considering the hardship claimed to be faced by the Petitioner in arranging for

making payment towards the stamp duty and registration charges for Flat Nos.1805 and 1806 and brokerage charges with regard to Flat No.1801 as well as for education and maintenance of said three minor children.

10. In view thereof, the Petition is allowed in terms of prayer Clauses (a) to (g) of the Petition which read as under:-

- a) The Notice Under Section 11 of the Guardian and Ward Act, 1890, may be dispensed with and/or discharged:
- b) The Petitioner may be appointed as a Guardian of the Properties of the said minors, without security or remuneration with regard to the share of the minors in the property as set out in **EXHIBIT "E"** hereto;
- c) That this Hon'ble Court be pleased to authorize the Petitioner to finalise and execute necessary Agreement/documents for sale for herself and for and on behalf of the minors with regard to the sale of the said Flat no. 1801, 18th Floor, Brizo Residency, 18th Floor,

Shivaji Nagar Junction, Ghatkopar Mankhurd Link Road,
Govandi, Mumbai- 400043 admeasuring 577 Sq. Ft.
Carpet Area alongwith allotted Car Parking space No.1;

d) That this Hon'ble Court be pleased to authorize the
Petitioner to finalise and sign, execute and register
necessary Agreement/documents for purchase for herself
jointly with her two minor sons namely Master Zaid,
Master Zakariya a Flat no. 1805, 18th Floor, Brizo
Residency, 18th Floor, Shivaji Nagar Junction, Ghatkopar
Mankhurd Link Road, Govandi, Mumbai- 400043
admeasuring 342 Sq. Ft. Carpet Area alongwith allotted
Car Parking space;

e) That this Hon'ble Court be pleased to authorize the
Petitioner to finalise and sign, execute and register
necessary Agreement/documents for purchase for herself
jointly with her minor daughter Miss Juveriya Naaz a
Flat no. 1806, 18th Floor, Brizo Residency, 18th Floor,
Shivaji Nagar Junction, Ghatkopar Mankhurd Link Road,

Govandi, Mumbai- 400043 admeasuring 425 Sq. Ft.

Carpet Area alongwith allotted Car Parking space;

f) From the sale proceeds of Flat No. 1801, this Hon'ble Court be pleased to permit the petitioner:-

- (i) to take a total sum of Rs. 41,21,812/- from the sale proceeds of flat No. 1801, which she had paid towards the balance consideration for purchase of Flat Nos 1805 and 1806;
- (ii) to keep aside a lumpsum amount for payment of stamp duty and registration charges etc on the Agreements for purchase of flat Nos 1805 and 1806;
- (iii) to keep aside a lumpsum amount towards brokerage charges payable for sale of flat No.1801;
- (iv) to keep aside a lumpsum amount for renovation and interior decoration work of Flat Nos 1805 and 1806;

and thereafter the balance net surplus sale proceeds, be

ordered to be distributed between the Petitioner and her three minor children as per Shariat and the minor's respective share may be directed to deposit with the Accounts Officer, High Court, Bombay and the Accounts Officer, High Court, Bombay may be directed to invest the same in any Nationalised Bank under Fixed Deposit and periodically interest may be given to the Petitioner for the maintenance and education of the said minors till each of the minor attains the age of majority i.e. 18 years and after attaining the age of majority the amount deposited with the Accounts Officer, High Court, Bombay, may be handed over to respective minors after obtaining appropriate orders from the Hon'ble Court;

g) The Petitioner be granted liberty to apply to this Hon'ble Court as and when occasion arises;

11. The Petition is accordingly disposed of. There shall be no order as to costs.

[R.I. CHAGLA J.]