

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

**TESTAMENTARY SUIT NO.137 OF 2017
IN
TESTAMENTARY PETITION NO.754 OF 2017**

Ms.Nina Dharamsy Kapadia , Plaintiff
versus
Bimla Indravadan Joshi and ors. , Defendants.

**WITH
INTERIM APPLICATION (L) NO.21026 OF 2021
IN
TESTAMENTARY SUIT NO.137 OF 2017
WITH
NOTICE OF MOTION NO.291 OF 2017
IN
TESTAMENTARY SUIT NO.137 OF 2017**

Mr. R.A.Shah a/w Mr. Aditya Sarangarajan and Mr. Kanak Kadam i/by
Mansukhlal Hiralal and Co. for the Plaintiff/Petitioner.

Mr. Dimple Vora i/by Markand Gandhi & Co. for the Defendants.

Ms. Nina D Kapadia – Plaintiff present.

Mr. Bimal I. Joshi – Defendant No.1 present.

Mr. Jay I Joshi – Defendant No.2 present.

Mr. Indravadan R. Joshi – Defendant No.3 present.

CORAM : ARIF S. DOCTOR, J.
DATE : 21st APRIL 2023

P.C. :

1. Today, when the matter was called, this Court directed the Learned Advocates for the parties to approach the alternate Bench since this Court was not inclined to take up the present matter. However, the Learned Advocates submitted that since the parties had arrived at a settlement and today all of them are present in Court with duly executed Consent Terms, this Court may take up the matter and dispose it of in terms of the Minutes of the order handed in.

2. The Defendants and their Learned Advocate submitted that they have no objection to this Court taking up the matter and passing appropriate orders, since two of the Defendants are travelling overseas tomorrow and it would be inconvenient for them to approach the alternate Bench at such a short notice.

3. Given the consent of all the parties who are present in Court today, the matter is taken up for passing orders.

4. The Plaintiff and Defendant Nos.1 to 3 are present in Court. They have been identified by their respective Advocates. They stated that they have signed the Consent Terms as well as Minutes of Order of their own free will and volition. The Consent Terms and Minutes of Order are taken on record. The

Consent Terms are marked "X" for identification and appended to this order.

5. Hence the following order is passed in terms of the Minutes of Order handed in.

- i. Resignation of Plaintiff/Petitioner as the executor of the Last Will and Testament dated 06.09.2007 of Rajni Indravadan Joshi is hereby accepted and the Defendant No.3 is hereby accepted as the Executor of the Last Will and Testament dated 06.09.2007 of Rajni Indravadan Joshi by consent of the partners in place and instead of the Plaintiff/Petitioner.
- ii. The Defendant No.3 as the executor has applied for consequential amendment of the petition in terms of the proposed amendment annexed to the Consent Terms as Annexure "A" (which includes the amendment to be carried out to the schedule of assets consisting of shares mentioned in Ex.1 to the Annexure "A" to the Consent Terms which are the shares belonging to the deceased in the physical form (not demated) and to be added as item nos. 1 to 325 which are not included in the petition when it was filed). The Defendant No.3 in his capacity as the executor shall carry out the said amendment within 15 days from the date of this order being uploaded.
- iii. The Defendants are hereby permitted to carry out necessary

amendments to give the effect to the Consent Terms including the change of name to the Executor from the Plaintiff to the Defendant No.3 and the consequential amendments as also amendment to the schedule as set out in the Consent Terms in particular Clause 5 of the Consent Terms.

- iv. By consent of parties, the Learned Prothonotary and Senior Master of this Court to issue the Probate of Will dated 6.9.2007 of the Deceased to Defendant No.3 pursuant to the amendments carried out in the Petition as stated hereinabove. Considering the age of Defendant No.3 (executor) i.e. 82 years, the process of issuing probate is expedited and the office to grant the probate expeditiously.
- v. Undertakings of the parties are accepted as the undertakings given to the Court.
- vi. Refund of Court Fees as per the Rules.
- vii. Issuance of certified copy expedited.
- viii. The office to proceed accordingly.
- ix. All interim/interlocutory applications, if any, stand disposed of.
- x. No order as to costs.

(ARIF S. DOCTOR, J.)

Coram :- Arif S. Doctor, J.

Date :- 21-11-2023

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11/2023
Arif S. Doctor
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO.137/2017

IN

TESTAMENTARY PETITION NO.754/2017

Petition for Probate of the Last Will and
Testament of Rajni Indravadan Joshi
alias (Noc) Rajni Dharansy Kapadia
alias Rajni Dharansy, Hindu, aged 76
years, married, Occupation: Legal
practitioner, an Indian Inhabitant of
Mumbai, and residing at the time of her
death at A-17, Usha Sadan, 3rd Floor,
Near Colaba Post Office, Shahid Bhagat
Singh Road, Colaba, Mumbai-400 005

...Deceased

Nina Dharansy Kapadia)
Alias Nina Dharansy, Hindu, aged)
74 years, Occupation : Legal)
Practitioner an Indian Inhabitant of)
Mumbai, and residing at 35,)
First Cavel Cross Lane, 4th Floor)
Mumbai-400 002.)
Being one of the sole executrix)

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Named under the last will and
 Testament of the above named
 deceased)... Plaintiff /Petitioners

Versus

1. Bimal Indraswami Joshi)
 Of Hindu Bombay Indian Inhabitant)
 presently at Canada Aged 41 years)
 Occupation: Service,)
 Residing at 452 Ashdene Ave)
 Mississauga L5B 4C7 Ontario,)
 Canada)
2. Jay Indraswami Joshi)
 Hindu Bombay Indian Inhabitant)
 Aged 44 years Occupation:)
 Advocate having his office at 2A,)
 Churchgate House, 32/34,)
 Veer Nariman Road,)
 Port. Bombay - 400 001)
3. Indraswami Ramchander Joshi)
 Of Hindu Bombay Indian Inhabitant)
 Age: 76 years, Occupation: Advocate)
 Solicitor & Notary having his office)

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10/10/17

10/10/17

At 2A, Churchgate House,)
 32/34 Veer Nariman Road,)
 Fort, Bombay - 400 001)...Defendants

CONSENT TERMS / CONSENT ORDER

DATE:

CORAM:

**BY CONSENT OF THE PARTIES IT IS HEREBY ORDERED
 AND RECORDED AS UNDER:**

1. Ms. Nina Dharamsy Kapadia, the Plaintiff/Petitioner abovenamed hereby resigns as an executor of Last Will and Testament dated 6.9.2007 of Rajni Indravadan Joshi (hereinafter referred to as "the said Will"). The resignation of the said Ms. Nina Dharamsy Kapadia as an executor of the said Will hereby tendered is accepted by this Hon'ble Court.

2. Mr. Indravadan Ramshanker Joshi, Defendant No.3 who was appointed as one of the executors under the said Will and who has filed a caveat dated 5.5.2017 hereby accepts the Will and withdraws the said caveat and hereby agrees to act as the executor under the said Will of the deceased as agreed between the parties. In view of the above, by consent of the parties the Defendant No.3 i.e. Mr. Indravadan Ramshanker Joshi is hereby appointed as the executor

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Il Joshi

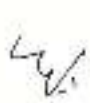
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of the estate of the deceased in place and stead of the Plaintiff i.e. Nina D. Kapadia.

3. The parties hereby agree and undertake to carry out necessary amendment to bring about the aforesaid effect in the record of the proceedings. Such amendment to be carried out by the Defendants within 15 days from the date of the Consent Terms being taken on record.

4. Mr. Indravadan Ramabanker Joshi, the Defendant No. 3 agrees to administer the estate of the deceased as per the directions contained under the Last Will and Testament dated 6.9.2007 of the deceased. The Defendant Nos.1 and 2 also hereby withdraw the respective caveat dated 30.4.2017 and 5.5.2017 filed by them challenging the validity of the said Will dated 6.9.2007 of the Deceased.

5. The Defendant No.3 as the executor shall apply for consequential amendment of the petition in terms of the proposed amendment as stated in Annexure "A" which is annexed hereto (which includes the amendment to be carried out in the schedule of assets consisting of shares mentioned in Ex. "1" to the Annexure "A" hereto which are the shares belonging to the deceased in the physical form (not demated) and to be added as item nos.1 to 324 which are not included in the petition when it was filed). The parties consent to the said amendment and accordingly the Defendant No.3

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in his capacity as the executor shall carry out the said amendment within 15 days from the Consent Terms being taken on record and the Hon'ble Court passing an order allowing the amendments.

6. The Plaintiff hereby declares, states and records that the said shares and securities enlisted in Ex. 1 to Annexure "A" hereto absolutely belonged and they continue to belong to the deceased to the exclusion of everybody including the Plaintiff, Mridula Jaysinh Kapadia, Ameet Jaysinh Kapadia and Radhika Dhiren Kapadia or any of them and except the Deceased, no other person had any right, title, interest and claim to the said shares. The parties hereto agree that the shares enlisted in Ex. 1 Item Nos. 1 to 324 Annexure. "A" hereto shall belong to and be transferred to the Defendant Nos. 1 and 2 abovenamed namely Bimal Indravadan Joshi and Jay Indravadan Joshi as the beneficiary under the said Will of the Deceased.

7. The Plaintiff undertakes that within 30 days of the date hereof, Nina Kapadia, will transfer 50% of the shares listed in **Annexure B hereto** in the demat account of Jay Indravadan Joshi maintained with HSBC bearing account no. 019475888605 and remaining 50% in the demat account of Bimal Indravadan Joshi maintained with Joindre Capital Services Limited bearing client ID no. 00418057.

8.(a) That the Defendants have been searching for physical shares of the deceased standing in the joint names of deceased and the



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Plaintiff and/or the deceased and the Plaintiff and Jaysinh Kapadia and/ or together with or without Mridula Kapadia and until now the shares which have been found out are enlisted in **Annexure "C"** hereto and as far as the said shares are concerned, all the procedural part for transfer thereof in the names of Defendant Nos.1 and 2 will be adopted and undertaken by the Defendants themselves at their own costs. However, for transfer of the said shares initially in the name of Plaintiff, the Plaintiff undertakes to provide necessary information, sign such forms, papers, documents, declarations etc., as are necessary for transfer of the said shares in **Annexure "C"**, including the physical shares as listed in Ex.1 to **Annexure "A"** hereto in the name of the Plaintiff at the first instance and for that purpose, the Plaintiff undertakes to transfer and deposit the said shares in a separate account of the Plaintiff which is already existing bearing account no. _____ in _____ Bank held by the Plaintiff, which account shall solely contain the shares mentioned hereinabove and the Plaintiff hereby undertakes to submit to the Defendants 1 and 2 the statement at the end of every month of the shares transferred to the aforesaid account of the Plaintiff. The Plaintiff undertakes that ultimately, when the said donated shares are transferred in the name of the Plaintiff, the Plaintiff undertakes to this Hon'ble Court to transfer 50% each of the said donated shares in the name of Jay Indravadan Joshi in account number 019475888605 in HSBC and remaining 50% of the said donated shares in the name of Bimal Indravadan Joshi in client ID number 00418057 held by him in Joindre Capital Services Limited.

8(b) The Plaintiff agrees and undertakes that if any further physical shares in the joint names of deceased and the Plaintiff and/or the deceased and the Plaintiff and Jaysinh Kapadia and/ or together with or without Mridula Kapadia or in the joint names of the deceased and to any other member of Kapadia family not being Nina Kapadia are found then in respect of the said shares also the procedure referred to in sub-clause a) above will be followed by Nina Kapadia or such family member/s, as the case may be for transfer of demated respective shares in the name of Jay Indravadan Joshi and Bimal Indravadan Joshi in the proportion and in the respective banks as referred to in sub-clause a) and Nina Kapadia undertakes to ensure that the same is done by such family member/s above and the undertaking of Nina Kapadia referred to in sub-clause a) above shall extend to the shares referred to in this sub-clause.

9. The Plaintiff alongwith the Defendant No.3 undertakes to apply to the HSBC Bank, M.G. Road Branch, at the first instance to add the name of Defendant No.3 in the bank account no.002-815330-006 standing in the name of deceased and as soon as the name of Defendant No.3 is added, the Plaintiff will and undertakes to withdraw as the joint account holder from the said account and Defendant No.3 thereafter will be the sole account holder of the said account and the Defendant No.3 will deal with the balance lying in the said account in accordance with the directions contained in the

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Last Will and Testament dated 6.9.2007. The Plaintiff i.e. Nina Kapadia undertakes to do the same within 60 days hereof.

10. The Plaintiff agrees and undertakes that within 15 days from the execution hereof, the Plaintiff along with the Defendants, shall visit Union Bank of India, Bombay Samachar Marg Branch, Bombay on the appointed date and hour to be fixed by parties by mutual consent and parties will jointly apply to bank authorities to open locker no.2291 and after opening the locker, the Plaintiff i.e. Nina Kapadia will handover all the contents thereof to Defendant no.3 and the Plaintiff and Defendant No.3 will surrender the said locker to bank authorities after removing the contents thereof. The Defendant No.3 states that the Defendant No.3 has continued to pay and has paid till date the rent for the said locker and if any rent is in arrears, the same will be paid by the Defendant No.3.

11. The Plaintiff agrees and undertakes to handover to Defendant No.3 in his capacity as the executor the following items including jewelry which the Plaintiff has admitted in her letter dated 5.12.2016 addressed to Defendant No.3

- (i) 2 diamond studded ring
- (ii) 2 gold diamond studded bangles
- (iii) Gucci wrist watch

The Plaintiff undertakes to handover to Defendant No.3 within 15 days from the date hereof.



12. The Plaintiff agrees and undertakes to, within 60 days from the date hereof, remove her name from account no. S.B.A/c. No.004810100023637 with Bank of India, Woodhouse Road Branch, Bombay, which stands in the joint names of Plaintiff and Defendant No.3. The procedure to be followed as per the Bank shall be carried out by the Defendant Nos. 1 to 3 as per the requirements of the Bank.

13. The Plaintiff agrees and undertakes to procure and handover to Defendant No.3 duly notarized declarations of Mridula Jaysinh Kapadia, Ameet Jaysinh Kapadia and Radhika Dhiren Kapadia and herself within 60 days from the date hereof in terms of the draft annexed hereto and marked **Annexure "D"**.

14. The Plaintiff agrees and undertakes that within 60 days from the date hereof to execute and get executed a Power of Attorney duly notarized from Mridula Jaysinh Kapadia, Ameet Jaysinh Kapadia and Radhika Dhiren Kapadia in terms of the draft hereto annexed and marked **Annexure "E"** so as to enable the Defendant No.3 to get all the shares belonging to the Deceased in different companies transferred in favour of Defendant No.3.

15. The parties hereto agree and confirm that the shares enlisted in the list being Annexure F hereto shall belong to the Defendant Nos. 1 and 2 in equal proportion. However, they shall be entitled to either 33.33% or 100% right, title and interest therein as more



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particularly set out in Annexure "F" hereto. The parties are aware that some of the shares are in demat form and the balance are in physical form. It is agreed by and between the parties hereto that the shares in the demat form shall be transferred by the Plaintiff to the Defendant Nos.1 and 2 equally as per Annexure "F". The Plaintiff hereby undertakes to do so within 60 days from the date hereof. So far as the physical shares are concerned, it is agreed between the parties hereto that the Plaintiff shall pay the market value as on the date of execution hereof to the Defendant Nos.1 and 2 equally in the proportion set out in Annexure "F" hereto. The Plaintiff undertakes to do so within 60 days from the date hereof and upon such payment the Defendant Nos. 1 and 2 shall have no rights, therein. Further some shares are not traceable. So far as such shares which are not traceable and (i) the Defendant Nos. 1 and 2 have 33.33% share and right therein are concerned, the Plaintiff undertakes to pay to the Defendant No.1 and 2 equally 33.33% of the market value of such shares as on the date of execution hereof, within 60 days from the date of execution hereof and thereupon the Defendant No. 1 and 2 shall have no share, right, title or interest herein and (ii) the Defendant Nos. 1 and 2 have 100% rights therein are concerned, the Defendant Nos. 1 and 2 alone shall be entitled to such shares to the exclusion of all others and shall be entitled to apply for duplicate/demat shares. The parties agree and undertake to co-operate and sign and cause all necessary parties to sign all necessary documents as may be required for the purpose.



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16. On the Plaintiff's complying with all the terms and conditions of the consent terms, the deceased and the heirs of the deceased i.e. Defendant Nos. 1 to 3 shall have no right, title, claim or interest in the immovable properties set out in Schedule 1 to 4 of the Petition. Defendant no.3 as executor and all the heirs and legal representatives of the deceased undertakes to execute the necessary document for transfer of the deceased's right, title and interest in the said properties in favour of Ameet Jaysinh Kapadia at his personal cost including stamp duty, registration charges etc.

17. The Defendant Nos. 1 to 3, i.e. Bimal Indravadan Joshi, Jay Indravadan Joshi and Indravadan Ramshanker Joshi hereby agree to withdraw, within 75 days from the filing these present consent terms, subject to the Plaintiff complying with all her obligations and undertakings as contained in these consent terms within the time prescribed hereinabove, i.e. 60 days from the date hereof, suit no.34/2018 pending in this Hon'ble Court and instituted by the Defendants as settled out of court with no orders as to cost and in view of the provisions of the Will of the Deceased. It is hereby agreed that the interim order passed in Suit No. 34/2018 shall on withdrawal stand vacated.

18. The parties agree that upon execution hereof, Nina Kapadia is discharged from furnishing accounts without claiming any commission, charges, fees and/or other remuneration as the private receiver.



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19. Refund of court fees as per rules.

20. The parties hereto agree and undertake that they shall co-operate with each other including signing, executing necessary documents if any required to execute the aforementioned terms.

21. The parties withdraw all the claims and allegations against each other.

Dated this 18 day of April 2023.

[Signature]
Nina Dharansy Kapadia
[Plaintiff/Petitioner]

[Signature]
Nina Dharansy Kapadia
[Plaintiff/Petitioner]

[Signature]
1. Bimal Indravadan Joshi
[Defendant No.1]

Advocate for Plaintiff/Petitioner 2. Jay Indravadan Joshi
[Defendant No.2]

[Signature]
3. Indravadan Rameshanker Joshi
[Defendant No.3]

[Signature]
For M/S. MARKAND GANDHI & CO.

[Signature]
And

Arshil Ajay Shah
Advocates for Defendants