

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO.94 OF 2024

IN
SUIT NO.46 OF 2022

Darius Soli Framroze	...	Applicant
In the matter between:		
Darius Soli Framroze	...	Plaintiff
Vs.		
Nerissa Sarosh Framroze	...	Defendant
and		
Khatu Sarosh Framroze	...	Third Party Respondent

Mr. Aloukik R. Pai a/w. Mr. Shanmukh Puranik and Ms. Priyanka Rammurthy for Applicant and Plaintiff.

Mr. Ajit Anekar a/w. Ms. Priyanka Srivastava i/b. Auris Legal for Defendant.

CORAM : MANISH PITALE, J.
DATE : FEBRUARY 15, 2024

P.C. :

Heard learned counsel for the parties.

2. By this application, the applicant (plaintiff) is seeking specific directions against the defendant, who is the original caveatrix in the testamentary petition. The applicant has invoked Sections 192 and 195 of the Indian Succession Act, 1925, hereinafter referred to as the 'Succession Act', while praying for appointment of fit person as a curator in respect of a flat belonging to the estate of the deceased, alleging that the conduct of the defendant in the present case is such that there is indeed apprehension of the property belonging to the estate of the deceased being put to loss or damage. It is submitted that the documents placed on record with the application sufficiently indicate that, unless a fit person is appointed at the earliest to protect the property belonging to the estate of the deceased, there is every likelihood of the

property suffering further loss.

3. In the reply affidavit, the defendant has denied the allegations made against her and in turn, she has alleged that the applicant has caused loss to the estate of the deceased. The rejoinder affidavit filed on behalf of the applicant seeks to place on record further documents in order to refute the allegations made against him.

4. The learned counsel appearing for the applicant invited attention of this Court to the documents placed on record along with the application, particularly a summary of utilization of the credit card of the deceased after he passed away on 28.05.2021. It is submitted that in the reply affidavit, the defendant has admitted to the fact that after the demise of the deceased, the credit card, ATM card, etc. were in possession of the defendant. It is submitted that the summary of utilization of the card would show that there have been huge amounts of cash withdrawals on the credit card, causing high level of bank finance charges and bank fees charges. The credit card has been utilized by the defendant for various activities including booking flight tickets etc., indicating the manner in which the credit card has been misused after the death of the deceased.

5. It is submitted that when the defendant was confronted with the said facts, she could not give a reasonable explanation, and therefore, the applicant apprehends that unless the prayers made in this application are granted, there is every likelihood of the defendant further causing loss to the estate of the deceased. It is claimed that the applicant, being the brother of the deceased, had taken care of the deceased and that the defendant, being the daughter of a deceased brother of the deceased, had been indulging in the said activities. It is brought to the notice of this Court that even in the affidavit filed in support of the caveat, the subject Will is not disputed, although it is claimed that the deceased had torn the

said Will, indicating that the deceased did not intend to bequeath the estate to the applicant. It is submitted that according to the applicant, either the original Will is in the custody of the defendant or that she has destroyed the same. It is submitted that in the backdrop of the obvious bitterness between the parties, if the estate is left under the control of the defendant, there is every likelihood of further loss and damage being caused.

6. In that context, the learned counsel for the applicant relied upon Sections 192 to 195 of the Succession Act. He submitted that although Section 192 indicates that an application under the said provision can be made before the District Court where any part of the property is found, since the aforesaid flat in Goa forms part of the properties and estates of the deceased, the instant application under the said provisions is maintainable before this Court. The learned counsel further made reference to Sections 247, 268 and 269 of the Succession Act to submit that since the parties are *Parsis*, the bar under Section 269(2) of the Succession Act does not operate and that therefore, during the pendency of the proceedings concerning the validity of the Will this Court can certainly exercise power to protect the estate of the deceased.

7. It was indicated that since the aforesaid flat is located in Goa, this Court may consider appointing a neutral third party available in Goa as a fit person to protect the estate of the deceased.

8. On the other hand, learned counsel appearing for the defendant submitted that the documents placed on record, including the credit card statements, cannot be said to be sufficient material to raise any doubt about the intentions of the defendant. It was submitted that sufficient material is already available on record to indicate that the relations between the deceased and the applicant were not pleasant and that the deceased did not intend to bequeath any of his estate to the applicant.

9. It is submitted that the defendant has stated in reply affidavit, along with supporting documents, that the applicant himself has caused loss to the tune of Rs.30,00,000/- to the estate of the deceased. It is further indicated on behalf of the defendant that the present application under Section 192 of the Succession Act is not maintainable, simply for the reason that the aforesaid flat in Goa is not within the jurisdiction of this Court, and therefore, the application deserves to be dismissed only on this ground. It is further submitted that the application does not indicate invocation of any other provision of the Succession Act and that therefore, the applicant has failed to make out his case for considering the prayers made in the application.

10. Having heard the learned counsel for the rival parties, this Court is of the opinion that the substance of the application ought to be given more importance than its form. A perusal of the application would show that according to the applicant, there is serious apprehension of the properties belonging to the estate of the deceased being put to loss and damage, unless the Court exercises power to appoint a fit person to protect the estate of the deceased. Section 192 of the Succession Act is one provision where the Court can exercise such power and appoint a curator in the facts and circumstances of the case. Section 192(1) of the Succession Act does indicate that such an application can be moved before the District Judge of the Court where any part of the property is situated. A strict interpretation of the said provision may indicate that an application for the reliefs sought in the present application would perhaps have to be moved before the Court within whose territorial jurisdiction the aforesaid property is located. But, at the same time, since the flat at Goa forms part of the estate of the deceased, on a liberal interpretation of Section 192 of the Succession Act and looking to the purpose for which the present application is moved, this Court could consider the present application for the reliefs sought by the applicant.

11. Nonetheless, as indicated hereinabove, since substance is to be given more importance than the form of the application, this Court is inclined to consider Sections 247, 268 and 269 of the Succession Act to entertain the prayers made in the present application. It is an admitted position that the parties to the present proceedings are *Parsis*. Therefore, the bar under Section 269(2) of the Succession Act does not operate. Section 269(1) also reserves power with the Court to pass appropriate directions in cases where the Court considers that the property belonging to the estate of the deceased is at the risk of loss or damage. Section 247 of the Succession Act assumes significance for the reason that it provides for appropriate directions to be issued by the Court for administration of the estate of the deceased, during the pendency of any suit, touching upon the validity of the Will of a deceased person.

12. In the present case, the suit concerns the validity of the subject Will, said to have been executed by the deceased. The applicant has approached this Court expressing apprehension with regard to the protection of the estate of the deceased and consequently for its appropriate administration. In such circumstances, considering the tenor of the application and the reliefs sought therein, this Court is inclined to consider the application under Section 247 of the Succession Act.

13. It is significant to note that while exercising power under the said provision, the Court can appoint an administrator as a general administrator to protect the estate of the deceased. But such administrator has no right of distributing the estate and the administrator would be under the immediate control of the Court. This sufficiently protects the estate of the deceased.

14. In the facts of the present case, this Court finds that after 28.05.2021 when the deceased expired, there were significant cash withdrawals on the credit card of the deceased. A statement made in the

reply affidavit indicates that even according to the defendant, the credit card was in her possession after the death of the deceased. Due to cash withdrawals having been made on the credit card, high level of bank charges were levied. The details in the credit card statement also indicate that it was used for payment of bills in restaurants, coffee shops and also for booking flight tickets for the defendant. Such material clearly indicates that the defendant was freely using the credit card even after the death of the deceased on 28.05.2021.

15. The statements made in the application also show that the applicant took efforts to obtain the death certificate of the deceased and only thereafter could the credit card be closed and that the payment of the bill had to be made by the applicant. These factors clearly indicate that the conduct of the defendant is such that the apprehension expressed on behalf of the applicant about the misuse of the property belonging to the deceased is justified. The flat at Goa belonging to the estate of the deceased is presently in possession of the defendant. It is specifically alleged by the applicant that the title deeds to the said flat and even the original Will may be in the said flat and in these circumstances, unless appropriate directions are issued by this Court, there is likelihood of putting the property of the deceased to the risk of loss and damage.

16. It is significant to note that even the defendant has made allegations against the applicant on affidavit and in that context, a document is annexed to the reply affidavit, indicating that the applicant has caused loss to the tune of Rs.30,00,000/- to the estate of the deceased. This is refuted by the applicant in the rejoinder affidavit.

17. In such a situation, instead of appointing the applicant, by exercising powers under the provisions of the Succession Act, as the person to administer the estate of the deceased during the pendency of the suit, it would be appropriate that a neutral third person is appointed,

who would obviously be under the control of this Court.

18. Since the aforesaid flat is located in Goa, this Court is of the opinion that a person available in Goa can be appointed as a fit person or general administrator to take control of the said flat and to prepare an inventory of the articles lying therein. The name of an advocate practising in Goa was suggested on behalf of the applicant, to which the defendant has no specific objection.

19. Accordingly, Advocate Vidhya Vilas Pilankar is appointed as a fit person and general administrator to carry out the directions being issued by this Court in the context of the prayers made in the application. The details of the said fit person are as follows:-

Advocate Vidhya Vilas Pilankar

Having office at E-1, First Floor, Gilberta Mansion,
Near Poornima Hotel, Ansabhat, Mapusa,
Goa-403 507.

Mobile : 91454 15990.

Email : adv.vidhyapilankar@gmail.com

20. It is indicated that the aforesaid advocate / general administrator would be charging one time fees of Rs.30,000/- for preparing inventory of the articles lying in the aforesaid flat and for locking and sealing the same. It is also indicated that she would be charging Rs.5,000/- per visit. The said amounts can be charged to the estate of the deceased.

21. In view of the above, the application is allowed by appointing the aforesaid Advocate Vidhya V. Pilankar as a fit and proper person / general administrator in respect of the flat bearing flat No.S-1, second floor, Ramnath Prasanna (near Sai Mandir), Alto Betim, Bardez, Goa - 403 521 along with two parking spaces in the stilt parking area and other amenities. The general administrator shall take possession of the said flat from the defendant within a week from today. The defendant shall hand

over possession. The administrator shall also prepare an inventory of the effects, items, documents and assets lying in the aforesaid flat. The inventory shall be prepared in the presence of the applicant and the defendant or their authorized representatives. The inventory shall be submitted to this Court with copies being served on the parties. Upon preparing the inventory, the administrator shall seal the flat and lock the same. The keys shall be retained by the administrator, subject to further directions of this Court.

22. In prayer clause (c), the applicant has sought directions against the defendant to comply with the requisitions as per notice dated 17.03.2023. The details of such requisitions would depend on the inventory that is prepared and therefore, for the purpose of prayer clause (c) of the application, the application is kept pending.

23. Liberty to the applicant as well as the defendant to apply to this Court after the inventory is prepared.

24. Needless to say, the contentions of the rival parties in respect of the prayer clause (c) are kept open. It is further directed that the said person appointed as the general administrator shall facilitate payment of outgoings pertaining to the said flat from the estate of the deceased. The applicant shall assist the administrator for the said purpose. In this regard, the general administrator shall send communications to the applicant as well as the defendant, upon the applicant and the defendant communicating their addresses of communication, including e-mail addresses to the general administrator.

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. Having heard the learned counsel for the rival parties and upon perusal of pleadings on record, particularly the stand taken in the affidavit in support of the caveat, the following issues are framed:

- “i. Whether the plaintiff proves that the Will dated 07.04.2010 was the validly executed last Will and Testament of the deceased?
- ii. Whether the defendant proves that the deceased destroyed the said Will and that therefore, the deceased died intestate?
- iii. What order?”

2. The plaintiff shall place on record the list of witnesses, affidavits in lieu of evidence of the witnesses, affidavit of documents and compilation of documents within six weeks from today. The defendant shall file statement of admission and denial within one week thereafter.

3. List for further directions on 10.04.2024.

(MANISH PITALE, J.)

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