

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.5291 OF 2022
IN
NOTICE OF MOTION NO.82 OF 2013
IN
TESTAMENTARY PETITION NO.1194 OF 2013

Chhaya Dayanand Ghugare ... Applicant / Petitioner
Vs.
Shripati @ Shripatrao Ganpat Ghugare ... Respondent

WITH
SUIT (L) NO.6700 OF 2022
WITH
NOTICE OF MOTION NO.22 OF 2014
IN
TESTAMENTARY PETITION NO.1194 OF 2013

Ms. Shivani Kunder for Applicant / Petitioner.

CORAM : MANISH PITALE, J.
DATE : MARCH 20, 2024

P.C. :

- . Heard learned counsel for the applicant / petitioner.
2. By this application, the applicant seeks permission to withdraw amount payable towards a LIC policy taken by the deceased husband of the applicant. By an earlier order dated 09.07.2013, the amount pertaining to the LIC policy was directed to be deposited in this Court. The said amount was invested and it has been earning interest. The applicant has annexed copy of a deposit certificate issued by the Prothonotary and Senior Master of this Court dated 14.11.2022, indicating the extent to which the aforesaid amount has earned interest.

3. The applicant has filed the petition for grant of letters of administration in respect of the property and estate lying to the credit of her deceased husband, who died on 11.05.2013. The father-in-law of the applicant had applied for being impleaded in the present petition on the ground that he had already filed a petition for grant of probate of a Will said to have been executed by the deceased. The said proceeding was filed in a court at Kolhapur. Having taken note of the said proceeding pending in the court at Kolhapur, by an order dated 04.08.2015, this Court had adjourned hearing of the present petition *sine die* pending the disposal of the said probate proceedings in the District Court at Kolhapur. Liberty was granted to the parties to apply.

4. It appears that subsequently, the pending proceeding in the Court at Kolhapur was held to be beyond the territorial jurisdiction of the said Court. In that light, the father-in-law filed Suit (L) No.6700 of 2022 before this Court. In this application, the respondent has not filed any reply but it appears that a copy of the reply was served on the applicant. The applicant is represented by the counsel appointed by the Legal Aid Committee. The learned counsel for the applicant had tendered a photocopy of the said reply of the respondent on the last date of listing.

5. This Court has perused the contents thereof. Despite the name of the advocate representing the respondent i.e. the father-in-law of the applicant, being shown in the cause-list, there is no appearance on behalf of the respondent.

6. A perusal of the photocopy of the reply affidavit of the respondent shows that the prayer in the present application is being opposed on the ground that the aforesaid suit bearing Suit (L) No.6700 of 2022 is pending, and therefore, this Court may not entertain the present application.

7. It is brought to the notice of this Court that the aforesaid suit i.e. Suit (L) No.6700 of 2022 has been dismissed due to non-removal of office objections as per order dated 25.07.2023 passed by the Prothonotary and Senior Master of this Court. Thereafter, a chamber order was filed for restoration of the suit. But, on 05.03.2024, the chamber order was also disposed of on the ground that the said suit stood transferred to the Bombay City Civil and Sessions Court in the light of a recent notification transferring such suits that were valued for an amount of less than Rs.10 crores. It is found that due to the change of pecuniary jurisdiction, the said suit stood transferred to the City Civil Court. The Prothonotary and Senior Master of this Court, in the order dated 05.03.2024, has recorded that the chamber order does not survive and it is disposed of further observing that the plaintiff therein i.e. the respondent in the present application would be at liberty to move the City Civil Court in that regard. There is nothing to indicate before this Court that any further steps have been taken by the respondent in the light of the order dated 05.03.2024 passed by the Prothonotary and Senior Master of this Court.

8. As noted hereinabove, there is no appearance on behalf of the respondent.

9. The facts, as they emerge from the aforesaid documents, are that, the suit filed by the respondent has already been disposed of. The main ground for opposing the present application was the pendency of the said suit. This Court has perused the plaint of the said suit and it is found that the respondent appears to have sought a declaration in his favour in respect of a flat, that was the subject matter of the alleged Will dated 12.04.2013 executed by the deceased husband of the applicant.

10. Although the suit has been disposed of and hence the main ground of opposition raised on behalf of the respondent does not survive, in

order to satisfy the conscience of the Court, the contents of the aforesaid alleged Will were perused. The said document shows that an immovable property in the name of the deceased was specifically referred to in the Will. Reference was also made to the amounts lying in certain bank accounts and jewellery in a locker in the name of the deceased. There is no reference to any other movable or immovable properties. There is also no residuary clause in the said Will and as a matter of fact, there is no reference at all to any insurance policies, much less the LIC policy, which is the subject matter of the present application.

11. This Court finds that the proceedings in the petition for grant of letters of administration have remained stalled in the light of the order passed by this Court with regard to the proceedings initiated by the father-in-law of the applicant in the court at Kolhapur. It is found from the record that the proceeding in the court at Kolhapur did not survive and that the father-in-law of the applicant filed the aforementioned suit in this Court, seeking a declaration only in respect of the flat and that suit has also been dismissed.

12. In the backdrop of the aforesaid facts, this Court is inclined to grant the prayer made in the present application, particularly because it is restricted to disbursal of the amount, pertaining to the LIC policy, lying in this Court. The amount deposited in pursuance of the order dated 09.07.2013 was invested and as per the copy of the deposit certificate placed on record, it has been earning interest.

13. The deposit certificate also refers to certain amount that was deposited in this Court, received from bank accounts that were lying in the name of the deceased. The applicant is not seeking any direction in respect of the said amount.

14. In these circumstances, this Court is of the opinion that the prayer

in the present application can be granted. The applicant is the widow of the deceased, who passed away as far back as on 11.05.2013. It is specifically stated in the application that the daughter is now about 17 years old and she is pursuing her studies in high school. It is submitted that finances are required for payment of her college fees, coaching fees etc. In that light, this Court is inclined to allow the present application.

15. In view of the above, the application is allowed and the Prothonotary and Senior Master of this Court is directed to disburse the amount pertaining to the LIC policy of the deceased, along with accrued interest. The applicant shall give the details of her bank account to the Prothonotary and Senior Master of this Court within a week from today. The amount shall be disbursed in favour of the applicant within one week from the details being provided.

16. The application is disposed of.

(MANISH PITALE, J.)

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