

Before: Shri S. S. Agate

Addl. Registrar (O.S.) /

Addl. Prothonotary and Senior Master

Date : 5th July, 2024

CALLED FOR DIRECTION:

**2. CHOL/273/2024
IN
MPT/118/2021**

) Ms. Shirin Irani, A/w. Sugat Ingle & Pradeep Yadav
) Advocate for the Applicant.

) Mr. Sanjay Maji, a/w. Bijal Gandhi, i/b D. M. Legal
) Assocs., Advocate for Applicant in IAL/8361/2024.
)

) P. C. : 1. The present Chamber Order is taken out by
) the Applicant Ms Marina Fernandes for discharge
) of Advocates D. M. Legal Associates, Advocates
) and Solicitors as Advocates on behalf of the
) Applicant / Orig. Respondent in the Misc.
) Testamentary Petition No.118 of 2021. The
) Applicant has filed affidavit in support dt.26th
) June, 2024. It is stated in the affidavit in support
) that she had filed the Testamentary Petition No.24
) of 2018 for the probate of the Last Will and
) Testament of Deceased Ms. Marie Fernandes. This
) Hon'ble Court was pleased to issue the probate of
) the said Last Will and Testament dated 8.11.2024
) of deceased Ms. Marie Fernandes. The Petitioner
) Marina Manuel Fernandes filed the Misc. Petition
) No.118 of 2021 for revocation of the said Probate.
) The said Misc. Petition is pending hearing and
) final disposal. She has further stated that she had
) appointed Advocate Eventa A. Gonsalves and
) Reyden L. Gonsalves to represent her in the above
) Misc. Petition. Thereafter several issues arose in
) the matter and she had signed and executed
) Power of Attorney dated 13.3.2023 in favour of
) the following persons (1) Mr Avadhut Anil
) Tatkare, (2) Mr. Dinesh Ramakant Shelar, and (3)
) Mr Shahurao Popatrao Lomate. The said persons
) wanted to take charge of the property being CTS
) No.870/A, admeasuring 1619.2 sq. Mtrs.
) Equivalent to 1935.84 sq. Yds. With a structure
) standing thereon known as Marina Manor and
) situated at Bullock Road, Bandstand, Bandra
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) West, Mumbai 400 050 as they had set their eyes
) on the said Property. The said persons influenced
) her to the extent that she signed and executed the
) said Power of Attorney in their favour. It is
) further stated that said persons then appointed
) Advocates D. M. Legal Associates Advocates and
) Solicitors having their office at 10, Yashwant
) Chambers, 3rd Floor, 3, Bharucha Marg, Behind
) Fab India, Kala Ghoda, Fort, Mumbai 400 001 on
) the strength of the said Power of Attorney to
) represent her in the above Misc. Petition No.118
) of 2021. She has further stated that to the best of
) her knowledge she has not personally signed the
) Vakalatnama appointing the said D. M. Legal
) Associates Advocates and Solicitors to represent
) her in the above Misc. Petition. The Vakalatnama
) appointing D. M. Legal Associates Advocates and
) Solicitors on her behalf is signed by the said
) Constituted Attorney. It is further stated that she
) does not wish that D. M. Legal Associates
) Advocates & Solicitors should represent her in the
) above mater, on account of various complications
) and issues that have arisen with regard to the
) above property during pendency of the above
) Misc. Petition and she is afraid that she may not
) be appropriately represented in the above petition
) by the present Advocates as the present Advocates
) are being instructed by her said persons. It is
) further stated that in the circumstances she
) proposed to appoint Advocate Sugat P. Ingle &
) Advocate Shirin Irani who have addressed letter
) dated 13.6.2024 to D. M. Legal Associates
) Advocates & Solicitors calling upon them to
) endorse their No Objection on the Vakalatnama,
) which she has signed in favor of her present
) aforesaid Advocates. The said letter was sought
) to be served upon D. M. Legal Associates
) Advocates & Solicitors having their office at 10,
) Yashwant Chambers, 3rd Floor, 3, Bharucha Marg,
) Behind Fab India, Kala Ghoda, Fort, Mumbai 00
) 001 by Hand Delivery, but the said Advocates
) refused to accept the service of the said letter or
) endorsed their No Objection on the said
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Vakalatnama. In the circumstances, the non-acceptance of the said letter amounts to refusal on the part of D. M. Legal Associates Advocates & Solicitors to give their No Objection on the Vakalatnama for appointing her present Advocates. In the circumstances, she is constrained to take out Chamber Order, for permission to appoint new Advocates to represent her in the above Misc. Petition No.118 of 2021 and to dispense with requirement of No Objection of the previous Advocates. It is further stated that no harm, loss or prejudice will be caused to any of the parties, if the present Chamber Order is allowed. It is imperative and necessary to effectively defend the above Misc. Petition effectively and hence it is necessary for her to appoint new Advocates and to represent her. She will suffer immense and irreparable harm, loss, prejudice and injury if she is not permitted to appoint Advocates of her choice and of her confidence and it is humbly prayed that the Chamber Order be made absolute with costs.

2. DM Legal Associates, Advocates and Solicitor have filed affidavit in reply dated 5th July, 2024 and strongly objected to grant the Chamber Order of the Applicant. It is submitted in the reply that: this affidavit is submitted to place on record the true and correct facts before this Hon'ble Court in passing an appropriate decision and order on the Chamber Order filed by the Applicant. In the reply it is categorically stated that the entire Chamber Order is founded on false, incorrect and unsubstantiated assertions, reeking of coercion, threats, and pressure exerted upon the Applicant by corrupt and fraudulent individuals, particularly one Remy Fernandes, with the primary intent to deprive the Applicant of her rightful transaction relating to the sale and transfer of immovable property being CTS No.870A, admeasuring 1936 sq.yards equivalent to 1618.79 sq. Meters alongwith bungalow known as Marina Manor situated at Kane Road, Mount Mary Hill, Bandra.

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) The Applicant initially entered into this
) transaction with Mr.Avadhut Tatkare, Dinesh
) Shelar, and another, and subsequently with Mr
) Ravindra Walia, from whom the Applicant has
) received large sums of money towards the sale
) consideration. As the Applicant was dissatisfied
) with the work and execution of the previous
) advocate, she expressed her desire to change the
) advocate. Consequently, with the joint
) consultation of the Applicant and the aforesaid
) intending Purchasers, the Applicant appointed
) DM Legal Associates, Advocates and Solicitors, as
) her legal representatives to attend and appear
) before this Hon'ble Court. The Applicant herself
) signed the Vakalatnama in their favour,
) authorizing them to represent her in Misc.
) Petition No.118 of 2021, which we filed with the
) Registry of the Hon'ble High Court. Since their
) appointment, DM Legal Associates, Advocates and
) Solicitors, has been representing the Applicant in
) the aforesaid Misc. Petition No.118 of 2021, and
) at no point has the Applicant raised any objection
) or issue regarding her representation before this
) Hon'ble Court. In fact, while discharging our
) duties, DM Legal Associates have had conferences
) with Senior Counsels and Senior Advocates,
) seeking their attendance to contest the aforesaid
) matter and seek the rejection and dismissal of
) Misc. Petition No.118 of 2021. This petition was
) filed for the revocation of the Probate dated
) November 16, 2017, granted in favour of the
) Applicant, upon which she claims her right,
) entitlement, and ownership over the property
) pursuant to the bequest made under the Will
) dated November 8, 2014 of the deceased Marie
) Fernandes. It is absolutely crucial that the
) Applicant succeeds in the aforesaid proceedings to
) claim her rightful entirement and ownership in
) respect of the said property. Failure to do so
) would result in significant injustice and
) undermine her legitimate interests as derived
) from the Probate and the Will of the deceased
) Marie Fernandes. It is further stated that for the
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) purpose of adjudicating the present application
) and passing appropriate directions thereon, it is
) absolutely necessary that the material facts that
) have transpired be placed before this Hon'ble
) Court. These facts are narrated as follows:

) 3. Initially, upon learning that the Applicant
) intended to sell and transfer the said property,
) Reme Fernandes, acting as a broker and estate
) agent, approached the Applicant offering
) assistance in finding a suitable purchaser for the
) property. The property, being leasehold and
) belonging to the Collector, was subject to
) litigation. Remy Fernandes convinced the
) Applicant to execute a Power of Attorney, granting
) him authority to act on her behalf concerning the
) property. The Applicant later represented and
) informed that such documents and other writings
) were forcefully signed in his favour under threat
) and coercion. Abusing his position as Power of
) Attorney, Remy Fernandes engaged in
) unauthorized transactions and incurred third-
) party liabilities, including taking out loans for his
) personal benefit in the name of the Applicant and
) the said property, all without the Applicant's
) knowledge or consent. This subjected the
) Applicant to numerous issues and complexities,
) exposing her to potential criminal liabilities. Upon
) learning unauthorized and fraudulent activities of
) Remy Fernandes, the Applicant immediately
) disassociated herself from Remy Fernandes and
) took immediate to find suitable parties to deal
) with the property and in that connection
) approached Mr Avadhut Tatkare and Ors. To sell
) and transfer the said property to them for
) consideration and on terms and conditions
) mutually agreed and recorded between them.
) These engagements culminated in the execution
) of the Memorandum of Understanding and a
) registered Power of Attorney dated August 13,
) 2023. Further, the Power of Attorney dated 27th
) November 2017 granted to Mr Remy Fernandes
) was promptly revoked by issuance of the Public
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) Notice dated 5th April, 2023 and all authorities
) and permissions granted to him were nullified.
) Through this newly executed Power of Attorney,
) the Applicant authorized Mr Tatkare and others to
) perform all necessary acts, deeds, and matters
) concerning the property, including assigning and
) transferring the rights, title, and interest of the
) property in favour of any third parties or
) developers interested in acquiring and/or
) developing the property. Thereafter, the
) Applicant, alongwith Mr Tatkare and others,
) approached Mr Ravindra Walia, partner of M/s
) Trak Homes Realty, to facilitate the sale and
) transfer of the said property. Subsequently,
) negotiations were successfully concluded, and as
) per the terms agreed upon, necessary documents
) were executed internally among the concerned
) parties, ensuring the establishment of a clear and
) marketable title to the Applicant, Mr. Tatkare, and
) others. Following these developments, as
) mentioned in para-2 above, DM Legal Associates,
) Advocates and Solicitors were appointed to
) represent the Applicant in the aforementioned
) Misc. Petition No.118 of 2021, as well as in
) proceedings before the Collector and any other
) litigation pertaining to the property. In the
) course of these transactions, Mr Ravindra Walia/
) M/s Trak Homes Realty has expended several
) crores in connection with the property, including
) the payment of the sale consideration to the
) Applicant. Moreover, during the execution of the
) transaction, the Applicant placed Mr Ravindra
) Walia in actual and physical possession of the said
) property.

) 4. Upon learning that the Applicant had
) already entered into a transaction with M/s Trak
) Homes Realty as stated above, Remy Fernandes,
) as informed to Mr Walia by the Applicant, began
) threatening her to cancel the deal and withdraw
) from the transaction. Additionally, he sent
) threatening messages to Mr Ravindra Walia,
) urging him to vacate the property. To intensify
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) pressure on the Applicant, Remy Fernandes,
) through his current lawyer, Mr Sugat Ingle, issued
) a Criminal Complaint addressed to the Applicant,
) invoking various sections of the Indian Penal
) Code, 1860. We crave leave to refer on the
) Criminal Complaint. We, at DM Legal Associates,
) Advocates and Solicitor, were perplexed to receive
) a letter dated June 13, 2024, from Advocate
) Shirin Irani and Advocate Sugat Ingle, seeking no
) objection on the Vakalatnama purportedly signed
) by the Applicant. Upon an initial check of the
) alleged signature, it was evident that the
) signature is entire dissimilar and distinctive from
) the one previously endorsed on our Vakalatnama.
) Consequently, we addressed a letter dated June
) 15, 2024, to Advocate Sugat Ingle and Advocate
) Shirin Irani, highlighting the distinct signatures of
) the Applicant and the involvement of corrupt and
) fraudulent individuals attempting to usurp the
) property involved in the matter. We also stated
) that the Applicant has not given any instructions
) or expressed any desire to endorse our no-
) objection certificate to Advocate Sugat Ingle and
) Advocate Shirin Irani. At this juncture, it is
) crucial to highlight that Advocate Sugat Ingle has
) filed a criminal complaint on the instruction of Mr
) Remy Fernandes against the Applicant.
) Therefore, we suspect that the present Chamber
) Order by the Applicant is made under coercion,
) threat, or influence of and/or on the instruction
) of Mr Remy Fernandes. It is further stated that
) we immediately forwarded the letter received by
) Advocate to Mr Ravindra Walia and he informed
) us that from last more than 2 months there was
) no trace of Applicant and on most of occasion
) when Applicant was sought to be contacted, her
) mobile was switched off. Infact, some time back
) when brother of Joseph Fernandes approached Mr
) Ravindra Walia to take some money, he informed
) that Applicant was not well and she has met with
) accident and once she resumes her health
) Applicant will come and meet Mr Ravindra Walia.
) Relying on such representation that too coming
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) from brother, Mr Ravindra Walia make further
) payment to Applicant which as to be adjusted
) towards the sale consideration. It is further
) submitted that rather than requesting the
) Applicant to attend our office and provide
) independent instructions for a change of lawyer,
) the present Advocate, to ensure that the Applicant
) does not reach our office, filed the present
) Application. This action was entirely unnecessary
) since we had never refused to grant a No
) Objection Certificate (NOC); we simply insisted
) on the Applicant's presence so that our Firm could
) clarify matters and also seek clearance of the
) Memo of Fees for the work done by us so far in
) connection with the matter. The filing of the
) present Application cannot be viewed in isolation
) but is part of a series of events that have
) transpired. In their respectfull submission, a
) much deeper inquiry is warranted by the Registry
) of this Hon'ble Court, especially regarding the
) direct conflict of interest involving the present
) Advocate, who appears to be acting at the behest
) and instigation of Remy Fernandes. Mr Ravindra
) Walia is in the process of filing a complaint with
) the Bar Council for investigation and disciplinary
) action against the Lawywer, considering the facts
) and background of the matter. It is further stated
) that in their understanding of the matter, the
) present application filed by Mr Sugat Ingle is
) directly in conflict of interest and must be viewed
) with utmost seriousness. We apprehend that the
) present application has been filed under duress,
) pressure, and criminal intimidation. In fact, on
) the last two occasions, when objections were
) raised, Remy Fernandes and other unauthorized
) persons accompanying the Applicant clearly
) indicated a larger criminal conspiracy to coerce
) the Applicant, who has received substantial sums
) from Mr Ravindra Walia, to withdraw from the
) contract. Their intention is to then take the law
) into their own hands and forcibly dispossess Mr
) Ravindra Walia and M/s Trak Homes Realty from
) the actual physical possession of the property.
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) This includes threatening the security guards
) deployed by Mr Walia at the site to protect the
) property against encroachment or trespassing.

) 5. Without prejudice to what is stated above,
) they shall now deal with the Application filed by
) the Applicant as under---:
)

) 6. With reference to para-1 of the application,
) they say that Applicant has misstated the
) Testamentary Petition No.. Application has filed
) Testamentary Petition No.650 of 2016 before this
) Hon'ble High Court, not Testamentary Petition
) No.24 of 2018, as stated on oath in the Affidavit
) in Support. The probate for the Last Will and
) Testament dated November 8, 2014, was granted
) by order dated November 16, 2017. With
) reference to para-2 of the application, it is stated
) that Marion Crasto has filed Misc. Petition No.118
) of 2021; therefore, Ms. Marina Fernandes cannot
) be the Petitioner in the aforesaid Misc. Petition
) challenging and seeking revocation of the Probate
) dated November 16, 2017, which is granted in
) her favour. This fact alone unambiguously
) undermines the genuineness and authenticity of
) the affidavit in support and the chamber order
) itself. It is repeated that such false and frivolous
) statements, made on oath by the Applicant,
) cannot be considered nonchalantly. With
) reference to para-3 of the application, it is
) reiterated and restated everything mentioned in
) aforesaid paragraph and deny what is contrary
) thereto and inconsistent therewith. With
) reference to paras-4 and 5 of the application, it is
) stated that Applicant herself endorsed the
) signature on the Vakalatnama in their favour,
) authorizing them to represent, plead and act on
) her behalf as Lawyers in Misc. Petition No.118 of
) 2021, wherein Applicant is Party Respondent. At
) this juncture, it is necessary to highlight that the
) initial Chamber Order served upon us stated their
) name as Dhaval Mehta & Co., which is factually
) incorrect.
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7. With reference to paras 6 to 10 of the application, they do not admit the contents thereof and refute the claims, contentions, allegations and accusations therein contained. It is stated that as Law Firm they have diligently performed their professional duties and responsibilities. As stated above they suspect foul play considering the background of the matter and the circumstances and manner in which the present application has been filed / caused by to be filed, which certainly indicates fraud and conspiracy of higher dimension. As stated above the present application cannot be looked in isolation but in larger frame of events and happening also taking into account previous attempts also being made to change the lawyer in similar manner. As officers of this Hon'ble Court, they are obliged to emphasize the manner in which the present Chamber Order is presented before this Hon'ble Court, containing misleading, patently erroneous, and deceptive statements on oath by the Applicant. DM Legal Associates have represented the Applicant on several occasions before this Hon'ble Court; additional pleadings and applications have been filed by them on the Applicant's instructions, which can be verified from the records of this Hon'ble Court. It is further submitted that in the light of foregoing, it is abundantly clear that the present Chamber Order has been orchestrated under duress, influence, and fraudulent intent, seeking to mislead this Hon'ble Court and circumvent due process. The Applicant's actions are a blatant attempt to undermine the integrity of judicial proceedings and perpetuate a conspiracy facilitated by unscrupulous individuals. Therefore, it is imperative that this Hon'ble Court dsmisses the Chamber Order and in the event if this Hon'ble Court despite the above is inclined to allow the application than the Applicant be directed to clear the outstanding Memo of Fees due and payable to us.

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8. I have perused the Chamber Order, Affidavit in Support and the Affidavit in reply filed by DM Legal Associates, Advocates and Solicitor. I have heard the Ld Advocates for the parties. This application is for discharge of Advocate.

9. Advocates DM Legal Associates have made several allegations in the affidavit in reply dated 5th July, 2024 which have been reproduced above. However, this Authority can not decide those allegations and it is out of the scope of this limited application of the Applicant for discharge of Advocate. The Applicant has given reasons for discharge in the affidavit in support as narrated above. The Applicant has clearly shown her intention in para-6 and 9 of the affidavit.

10. Advocates DM Legal Associates have strongly objected to the discharge. They have levelled various allegations about Applicant signing Vakalatnama authorizing them to represent her in Misc. Petition No.118 of 2021. Further, para-2 of affidavit in reply states that the Chamber Order is founded on false, incorrect, and unsubstantiated assertions, reeking of coercion, threats and pressure exerted upon the Applicant by corrupt and fraudulent individuals. That this allegation is not accepted by Applicant is present alongwith her new Advocate who will come on record after this order. Further, these allegations are to be proved by the Applicant and not by the Advocates DM Legal Associates and this is not the appropriate forum. Further, in para-3 of the reply, it is stated that Remy Fernandes convinced the Applicant to execute a Power of Attorney, granting him authority to act on her behalf concerning the property and Remy Fernandes engaged in unauthorized transactions and incurred third-party liabilities, including taking out loans for his personal benefit in the name of the Applicant and the said property. This allegation also requires

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) trial and evidence and this Authority can not
) record full fledged evidence and hold enquiry as it
) is out of the purview of discharge application.
) Further, in para 3.4 the allegation is about the
) Applicant alongwith others approached partner of
) M/s Trak Homes Realty to facilitate the sale and
) transfer of the said property and subsequently,
) negotiations were successfully concluded and as
) per the terms agreed upon, necessary documents
) were executed internally among the concerned
) parties, ensuring the establishment of a clear and
) marketable title to the Applicant and others. This
) also requires necessary proof with documentary
) evidence and for this remedy is different. This
) authority can not go into this at this juncture.
) There is another allegation that Mr Ravindra
) Walia is in the process of filing a complaint with
) the Bar Council for investigation and disciplinary
) action against the Lawyer. This also is not the
) issue before this Authority for discharge. The
) Advocate has independent remedy before
) appropriate forum. The other grounds for
) objection are about filing Misc. Petition No.118 of
) 2021 by Marion Crasto and, therefore, ms Marina
) Fernandes cannot be the Petitioner in the
) aforesaid Misc. Petition challenging and seeking
) revocation of the Probate dated November, 2017,
) which is granted in her favour. Again, here I have
) to mention that this issue is to be decided by the
) Hon'ble Testamentary Court and no findings can
) be given by this Authority as it is the jurisdiction
) of the Hon'ble Testamentary Court to revoke
) probate. Therefore, the submission made by the
) Advocates DM Legal Associates that the filing of
) the present application cannot be viewed in
) isolation but is a part of series of events that have
) transpired cannot be accepted for the above
) reasons. All those allegations levelled by the
) Advocates require consideration by the different
) appropriate forums that too after leading the
) evidence and assessed by those authorities.

) 11. Last objection is about the clearance of
)

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) outstanding Memo of Fees due and payable to DM
) Legal Associates. In para-6 it is accepted by the
) Advocates DM Legal Associates that they had
) never refused to grant a No Objection Certificate
) (NOC); and they simply insisted on the
) Applicant's presence so that their firm could
) clarify matters and also seek clearance of the
) Memo of Fees for the work done. In Para-14 last
) line it is submitted that if this Hon'ble Court
) despite the above inclined to allow the
) application then the Applicant be directed to clear
) the outstanding Memo of Fees due and payable to
) them. I must mention here that normally,
) professional fees is the contract outside the court
) between the client and Advocate and therefore,
) while considering application for discharge of
) Advocate, the same cannot be gone into.
)

) 12. After taking into account the averments
) made in the Affidavit in support and upon
) hearing Advocates, and for the reasons
) mentioned above, present Chamber Order is
) allowed and signed separately discharging
) DM Legal Associates Advocates and
) Solicitors as Advocates for the Applicant.
) Office to delete the name of DM Legal
) Associates Advocates and Solicitors as
) Advocate for Applicant / Original
) Respondent. Applicant Ms Marina
) Fernandes to communicate today's order to
) DM Legal Associates, Advocates and
) Solicitors and engage any other lawyer, if
) she so desire.
)
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05.07.2024

Adtl. Registrar (O.S.) /
Adtl. Prothonotary and Senior Master