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

MISCELLANEOUS PETITION NO.240 OF 2025

IN

TESTAMENTARY PETITION NO.639 OF 2022

Shireen Dinshaw Mistry and ors. ... Petitioners
v/s.
Bilkish Yunus Namakwala ... Respondent

WITH

INTERIM APPLICATION (L) NO.5597 OF 2025

IN

MISCELLANEOUS PETITION NO. 240 OF 2025

WITH

INTERIM APPLICATION (L) NO.12552 OF 2025

IN

MISCELLANEOUS PETITION NO. 240 OF 2025

WITH

INTERIM APPLICATION (L) NO.11244 OF 2025

IN

MISCELLANEOUS PETITION NO. 240 OF 2025

WITH

INTERIM APPLICATION (L) NO.2757 OF 2025

IN

TESTAMENTARY PETITION NO.639 OF 2022

Mr. Aspi Chinoy, Senior Advocate with Mr. Shanay Shah, Ms. Soniya Putta, Mr. Karan Mehta and Ms. Sovparnika S. i/by Solomon & Co. for the Petitioner.

Dr. Warunjikar with Ms. Shagufa Ansari for the Respondent.

Mr. A. L. Shaikh for the Applicant in IAL No.5597 of 2025 and IAL No.2757 of 2025.

CORAM : Kamal Khata, J.
DATED : 11th July 2025.

P.C.:-

1. By yesterday's Order dated 10th July, 2025, two pre-conditions were imposed on the Respondent i) to pay costs of Rs.1,00,000/- to the Petitioner for adjournment granted. ii) to deposit the Letters of Administration as directed by the order dated 10th February, 2025.

2. When the matter was called out, Dr. Warunjikar, was not present, despite the matter being specifically listed at 12.30 a.m. This fact is placed on record because even yesterday despite fixing the matter at 3.00 p.m. learned counsel was unavailable and request was made for a keep back at around 4.15 p.m.

3. Junior of Dr. Warunjikar was asked to proceed in the matter but was unable to do so. He was then asked to tender

list of dates and events which he did. Shortly thereafter, Dr. Warunjikar appeared and submitted that his client seeks recall of yesterday's order imposing costs, and since she is in Gujarat she is also unable to deposit the Letters of Administration which was directed to be deposited by the Court. He therefore submits that if the Court permits him would continue to argue the matter or the Court may proceed to decide the matter *ex parte*.

4. Thus, he is neither willing to make the payment nor is able to deposit on the Letters of Administration.

5. In view of these submissions of Dr. Warunjikar, response of Mr. Chinoy's was sought.

6. Mr. Chinoy, submitted that the Respondent may be heard and the pre-conditions may be dispensed with, solely in the interest of proceeding with the matter. However, he pointed out that the Respondent appears to have been attempting to delay the proceedings, as is evident from the email dated 9th July, 2025 addressed to Petitioners, which merely states that she was unable to contact her Advocate, without mentioning that she was out of town.

7. Having heard both sides, and in the interest of justice, the Court deems it appropriate to dispense with the pre-conditions of depositing the Letters of Administration and payment of costs for today, solely to allow the matter to proceed.

8. Upon the pre-conditions being dispensed with, Dr. Warunjikar submits he is still unable to proceed with the matter, as he has not received instructions from his client who is in Gujarat. He also stated that he has not vetted the list of dates and events or the submissions tendered by his junior and is, therefore, unable to argue the matter today.

9. He further submitted that no prejudice would be caused, if the matter is adjourned to Tuesday, as an interim relief is already operating in favour of the Petitioner. He submitted that on Tuesday, he will either proceed with the matter, if he has instructions, or will inform the Court accordingly.

10. Upon inquiry, Dr. Warunjikar submitted that the client is attending to one Ashiya Kapadia, aged 66 years who is admitted at Shraddha Arogya Mandir, Hospital Vapi Gujarat.

11. In view of the above submissions, the request for adjournment is acceded to.

12. However, the Respondent shall ensure strict compliance with the previous orders on or before the next date.

13. List the matter on 15th July, 2025 at 12.30 p.m.

(Kamal Khata, J.)