

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO.2538 OF 2024**

IN

TESTAMENTARY SUIT NO.34 OF 2024

a/w

TESTAMENTARY SUIT NO.34 OF 2024

IN

TESTAMENTARY PETITION NO.696 OF 2023

a/w

INTERIM APPLICATION [L] NO.13857 OF 2024

IN

TESTAMENTARY SUIT NO.34 OF 2024

a/w

INTERIM APPLICATION [L] NO.26741 OF 2024

IN

TESTAMENTARY SUIT NO.34 OF 2024

a/w

INTERIM APPLICATION [L] NO.28253 OF 2024

IN

TESTAMENTARY SUIT NO.34 OF 2024

Pradeep Kishan Hirani | **Applicant**

Vs.

Pushpa Kishan Hirani | **Respondent**

a/w

INTERIM APPLICATION [L] NO.9738 OF 2023

IN

SUIT NO.482 OF 2023

Pushpa Kishan Hirani] **Applicant**
Vs.
Pradeep Kishan Hirani] **Respondent**
a/w

INTERIM APPLICATION [L] NO.1293 OF 2024

IN

SUIT NO.482 OF 2023

Sanjay Kishan Hirani] **Applicant**
Vs.
Pushpa Kishan Hirani and others] **Respondent**

.....

Ms. Priyanka Kothari a/w Ms. Vinali Bhaidkar, for Plaintiff in Testamentary Suit No.34 of 2024.

Mr. Pradeep J. Thorat a/w Mr. Anish S. Jadhav a/w Mr. Dev S. Tejani a/w Ms. Vasundhara Singh i/b Mr. Manoj K. Bhatia, for Applicant/Plaintiff In Interim Application [L] No.9738 of 2023 in Suit No.482 of 2023.

Mr. Shyam K. Singh, for Respondent in Interim Application No.2538 of 2024 in Testamentary Suit No.34 of 2024 in Testamentary Petition No.696 of 2023.

Mr. Milind Prabhune, for Defendant No.2/for Application in Interim Application [L] No.1293 of 2023.

Mr. Ajay Bhise, for Respondent No.2 in Interim Application [Stamp] No.28253 of 2024.

.....

CORAM : ARIF S. DOCTOR, J.

DATE : 2nd MAY, 2025.

P.C.

1. Mr. Thorat, learned Counsel appearing on behalf of the plaintiff in Suit No.482 of 2023 points out that this Court had vide an order dated 21st December, 2023 passed in Interim Application [L] No.9738 of 2023 granted ad-interim relief in terms of prayer clauses (b) as against defendant No.1 and in terms of prayer clauses (a) and (b) as against the defendant No.2. He then points out that the matter has now been moved since two flats of the estate of the deceased namely one Kishan Hirani have been let out on leave and licence basis to two licensees. He points out that in respect of one flat i.e flat in the building known as Saturn Apartment, licence period came to an end in May, 2022. He points out that despite this, licensee continued to be in use and occupation of the said flat without payment of any licence fee.

2. At this stage, learned Counsel appearing on behalf of the licensee in respect of flat in Saturn Apartment submits that the licensee is ready and willing to make payment/deposit of outstanding licence fee which according to him is Rs.47,00,000/-. The licensee is, therefore, directed to make payment of this amount within a period of two months from today. No further time or request for time shall be entertained. This is

only by way of indulgence. He also submits that the licensee is willing to enter into a fresh leave and licence agreement in respect of the said premises.

3. In so far as the flat which is in Jewel Apartment is concerned, I am informed that the period of leave and licence gets over in June, 2025. It is informed, however, that the licence fee in respect of the said flat has also not been paid since October, 2022. Thus, today learned Counsel submits that it is imperative that Court appoints a Court Receiver in respect of the said flat to ensure that the estate of the deceased is safeguarded.

4. Learned Counsel appearing on behalf of the plaintiff in Suit No.34 of 2024 submits that notice of today's hearing is given to the licensee in respect of flat in Jewel Apartment. Affidavit of service has been filed by her. Despite it, today none appears. Hence, in my view, a sufficient cause has been made out to appoint Court Receiver. Hence, Court Receiver is appointed in respect of both the flats. Formal possession of the said flats shall be taken by the Court Receiver by fixing board of the Court Receiver on the said flats, however, physical possession, at this stage, is not to be taken because I have accepted undertaking of the learned Counsel in respect of the flat in Saturn

apartment that outstanding amount of licence fee shall be paid within a period of two months from today.

5. It is made clear that if licensee of flat in Saturn apartment is desirous to enter into a fresh leave and licence agreement, the same shall be done within a period of two weeks from today with the Court Receiver.

6. Having due regard to the submissions made, Interim Application [L] No.9738 of 2023 is allowed in terms of prayer clauses (c) which read as under;

“(c) That pending the hearing and final disposal of the Suit the Court Receiver, High Court, Bombay be appointed as a Receiver under Order 40 Rule 1 of the Code of Civil Procedure, 1908 in respect of the Jewel Apartment Flat & Saturn Apartment Flat with powers to deal with the Licensees therein, collect licensee fees, recover possession, renew leave and licence agreement and deal, with the concerned Society and discharges all dues in respect thereof”

(d) That pending the hearing and final disposal of the Suit the Court Receiver, High Court, Bombay be appointed as a Receiver under Order 40 Rule 1 of the Code of Civil Procedure, 1908 in respect of the Kakad Apartment Flat with power to deal with the pending

Suit and deal with the concerned Advocate and to represent the interest of the deceased in respect thereof.

Copy of the order be served upon the licensee in respect of the Jewel apartment.

7. In so far as Interim Application No.2538 of 2024 is concerned, Learned Counsel makes a statement that no third party rights in respect of flat in Hicon Enclave Apartment shall be created. Interim Application No.2538 of 2024 is disposed of on the basis of the aforesaid statement.

8. In view of the fact that this Court has now appointed a Court Receiver, Interim Application [L] No.28253 of 2024 and Interim Application [L] No.26741 of 2024 are disposed of as being infructuous.

9. At this stage, it was put to Learned Counsel as to whether their clients were willing to submit their disputes and differences to mediation in an attempt to bring resolution. Learned Counsel submitted that their clients were willing to submit their disputes and differences to mediation. Hence, I appoint Mr. Atul Damle, Senior Advocate to act as Mediator in respect of the disputes and difference between the

parties. Details of Mr. Atul Damle, Senior Advocate are as under:

Name: Mr. Atul Damle, Senior Advocate,

Address: A/10, 1st Floor, Plot No.36,

Tamarind House Lane,

Hutatma Chowk, Fort, Mumbai 400 023.

Mobile No.9820146525

Email: atul.damle@rediffmail.com

10. On a copy of this order being uploaded, both the Counsel shall jointly approach Learned Mediator Mr. Atul Damle and fix a schedule for mediation. The costs, charges and expenses of mediation shall be shared equally by the parties.

11. Stand over to 2nd July, 2025.

[ARIF S. DOCTOR J.]