IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.4360 OF 2025
IN
SUIT NO.183 OF 2025

Shernaz Hosheder Godha .. Applicant.

In the matter between
Nazneen Mark Harper
& Another .. Plaintiffs.
v/s.
Rhoda Mehli Kharas & Others .. Defendants.

Adv. Karl Tamboly with Adv. Cyrus Jal, Adv. Feroze Patel, Adv. Meherasp Mistry and Adv. Ananya Krishnan i/b. Khaitan & Co., for the Applicant/ Orig. Plaintiffs.
Adv. Mayur Khandeparkar with Adv. Melvyn Fernandes, Adv. Shlok Parekh and Adv. Aditya Chavan i/b. Vaish Associates, for Respondent Nos. 1and 2/ Defendant Nos. 1 and 2.
Adv. Pheroze Mehta with Adv. Bhakti Mehta, Adv. Letishiya Chaturvedi i/b. Wadia Ghandy & Co., for Defendant No.5.

CORAM: FIRDOSH P. POONIWALLA,J.
DATE : 13th OCTOBER, 2025.

P. C:-

1 This Interim Application has been filed, seeking various reliefs. However, Mr. Tamboly, the learned Counsel appearing for the Plaintiff, has pressed for interim relief in terms of prayer clause (f) thereof, which reads as under:-

> *" pending the final hearing and disposal of the Plaint for administration of the estate, this Hon'ble Court be pleased to direct Defendant No.1 to deposit an amount of Rs.67,00,000/- (Rupees Sixty Seven Lakhs only) received as consideration for sale of the Pune flat with this Hon'ble Court."*

2 Plaintiff No.1 is the daughter of Plaintiff No.2. Plaintiff No.2 is the first wife of the deceased Mehli Sohrab Kharas. Defendant No.1 is the second wife of the deceased Mehli Sohrab Kharas. Defendant No.2 is the daughter of the second wife of Mehli Sohrab Kharas i.e. of Defendant No.1. Defendant No.3 is the son of Plaintiff No.2.

3 By a Will dated 4th September, 2020, the deceased Mehli Sohrab Kharas had made various bequests. Clause 3 of the Will is relevant and reads as under:-

> *" I have a Flat under construction in Pune which stands first in my name and secondly in my wife Rhoda's name. Rhoda's name has been added to it only and solely for the sake of convenience. The flat has been purchased wholly by me and wholly from my funds. The said flat is Flat No. 802 on 8th floor of the Building A2 of Kingston Atlantis, situated at Mohammedwadi, in Sector No.54/663, of city Pune and it has been Registered under Agreement made and Executed at Pune on 21 February, 2018 under MTR Challan 6 (GRN No: MH009479699201718R). It is my intention that this Flat will be sold by me in case the completion of the flat is within my lifetime and the total sale consideration after all the necessary Government related payments are made towards the sale of the said Flat, shall be deposited into a total separate bank account. The interest received on this amount shall be enjoyed by me and my wife Rhoda during my lifetime only. After my demise, this amount of deposit shall equally, ie in three equal parts, be*

divided and given to my three children MR. MINOCHER MEHLI KHARAS (my son from my first marriage and having Date of Birth 8th August, 1965 and hereinafter for the sake of convenience referred to as my son Minocher), MRS. NAZNEEN. MARK HARPER (my daughter from my first marriage having Date of Birth 23 November, 1967 and hereinafter for the sake of convenience referred to as 'my daughter Nazneen') and MRS. ANAHITA ADITYA AGICHA (my daughter from my current marriage with my wife Rhoda and having Date of birth 10th June, 1986 and Permanent Account Number ANWPK3586E and AADHAR Number 694675556803 and hereinafter for the sake of convenience referred to as 'my daughter Anahita'). In other words, the amount of deposit shall lie as it is until I am alive and the deposit money shall be distributed amongst my three children equally upon and after my demise. If however, the construction is completed after my demise, then I direct my Executor, ie, my wife Rhoda to sell the flat and the total sale consideration shall be distributed equally, ie., in three equal parts, and be given to my three children, ie, my son Minocher, my daughter Nazneen and my daughter Anahita."

4 As per clause 3 of the Will, it is provided that the deceased had purchased wholly from his funds Flat No.802 on the 8th Floor of the building A2 of Kingston Atlantis situated at Mohammedwadi in Sector No.54/663, of Pune (" the said flat").

5 Clause 3 of the Will also provided that, on completion of the said flat,it would be sold. Further, Clause 3 provided that, after the demise of the deceased, the amount from the flat shall be divided in three equal parts and given to the three children of the deceased i.e. Plaintiff No.1, Defendant Nos. 2 and 3.

6 During his life time, the deceased sold the said flat and the sale consideration of the said flat was deposited in Account No.

000410100054426 of Bank of India. Thereafter, the amount deposited in Bank of India was invested in Mutual Funds mentioned at sub-clauses (viii), (ix) and (xiii) of Clause 3(D) of a Draft Petition of Probate which had been sent by Defendant No.1 to the Plaintiffs.

7 It is the case of the Plaintiffs that this legacy was a demonstrative legacy as defined in Section 150 of the Indian Succession Act, 1925 (herein after referred to as "the Succession Act"). In this regard, the Plaintiffs relied upon a judgement of this Court in ***Rajanikant Mansukhlal v/s. Kiko Ratilal and Others reported in 1932 SCC Online Bom 95.***

8 The Plaintiffs further submitted that, since the said legacy was a demonstrative legacy, by investing it in Mutual Funds, it did not adeem under Section 152 of the Succession Act and there was no ademption by virtue of Section 153 of the Succession Act. In these circumstances, the Plaintiffs submitted that Plaintiff No.1 and Defendant Nos. 2 and 3 have an interest in the amounts that are invested in the Mutual Funds.

9 On the other hand, it is the contention of Defendant Nos. 1 and 2 that the legacy was a specific legacy and, therefore, once it was converted into Mutual Funds, it had adeemed by virtue of the provisions of Section 152 of the Succession Act. Defendant Nos. 1 and 2, in this regard, pointed out that the said flat had been sold by the deceased itself, it was the deceased who has deposited the amounts in the bank account of the deceased and the deceased had himself invested the funds in

Mutual Funds. Defendant Nos. 1 and 2 further submitted that, therefore, this was a bequest which the deceased was desirous of giving to Defendant No.1 as per clause 7 of the Will and, in any case, it would fall within the residuary clauses 17, 18, 19 and 24 of the Will.

10 I am afraid that I am unable to accept the submission of Defendant Nos. 1 and 2. Section 150 of the Succession Act defines a demonstrative legacy and reads as under:-

> *"150:- **Demonstrative legacy defined -** Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.*
> *Explanation:- The distinction between a specific legacy and a demonstrative legacy consists in this, that-*
> *Where specified prop*erty is given to the legatee, the legacy is specific;
> where the legacy is directed to be paid out of specified property, it is demonstrative."

11 The Explanation to Section 150 of the Succession Act makes it very clear that if the legacy is directed to be paid out of specified property it is demonstrative. The Plaintiff has also referred to the judgement in **Rajanikant (supra)** in this regard. Paragraphs 2 and 6 of the said judgement are relevant and are set out here under:-

> *"2:- It is urged on behalf of the appellant that the legacies were specific and not demonstrative legacies, and therefore she was entitled to the mesne profits of the lands from the date of the death of the testator till the sale of the lands by the receiver under Section 349 of the Succession Act of 1925.*

The portion of the will relating to these legacies runs as follows:-

" After the amount due in respect of lands, sold under oral agreements has been received, the same is to be given by Ritilla, Thakurdas and Chandulal as mentioned below. The particulars thereof are as follows: Rs.10,000 (in words ten thousand rupees) should be paid to my wife named Maganbai. Rs.4,000 (in words four thousand rupees) should be paid to my daughter named Kiki. Rs.4,000 (in words four thousand rupees) should be paid to my daughter named Karola for herself and her son named Shantilal together. In all Rs.18,000 (in words eighteen thousand rupees) should be paid."

6:- The case of Calow v. Calow is distinguishable on the ground that the part of free hold land was specially devised though subject to a contract of sale and the intention of the testator was to pass whatever interest the testator had in the property. In the case of Page v. Leapingwell the intention of the testator was that the legatees should take as specific legatees. The distinction is made clear by the last Illus. (iv) and Illus (vii) in Section 142 of the Succession Act. The last case, Fryer v. Morris, cited on behalf of the appellant, does not apply to the facts of the present case. <u>Having regard to the terms of the will, we are of opinion that the legacies which were directed to be paid out of the sale proceeds of the land were demonstrative legacies and fell within Section 150 and not Section 142 of the Succession Act.</u> It is further urged on behalf of the appellant that if these legacies are demonstrative legacies and not specific legacies she is entitled to interest under Section 351 of the Succession Act. Though there is no provision for payment of interest on a demonstrative legacy, it appears that according to the English law, interest is payable on the demonstrative legacy from the expiry of one year from the testator's death: see In re Walford Kenyon v. Walford, and the same is the law in India: of Chinnam v. Tadikonda and Administrator – General v. A. D. Christiana. If Section 351 of the Succession Act, applies the plaintiff will be entitled to interest from the *expiry of one year from the testator's death. But it is contended on behalf of the appellant that the case falls under Section 352 of the Succession Act, for a time has been fixed for the payment of the general legacy, viz., the date of the sale of the lands. The provision runs as follows:-*

" After the amount due in respect of lands sold under oral agreements has ben received, the same is to be given by Ratilal, Thakurdas, and Chandulal as mentioned below."

(emphasis supplied)

12 Since in the present case, the legacy in clause 3 was to be paid out of specified property i.e. the said flat, it is a demonstrative legacy. Section 152 of the Succession Act which deals with ademption of a legacy, reads as under:-

"152:- Ademption explained – If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject matter having been withdrawn from the operation of the Will."

13 A perusal of Section 152 of the Succession Act shows that it applies to a specific bequest and not to demonstrative legacies and, therefore, in the present case, since the bequest is a demonstrative legacy, Section 152 of the Succession Act is not applicable and there will be no ademption of the legacy.

14 This is clear from Section 153 of the Succession Act which provides that a demonstrative legacy is not adeemed by reason that the property on which it is charged by the Will does not exist at the time of

the death of the testator, or has been converted into property of a different kind, but it shall in such case be paid out of the general assets of the testator.

15 A combined reading of Sections 150, 152 and 153 makes it very clear that the legacy given by Clause 3 of the Will by the deceased has not adeemed and that Plaintiff and Defendant Nos. 2 and 3 would be entitled to a share in the same. Since the monies received from sale of the said property have been invested in Mutual Funds which are shown at sub-clauses (viii), (ix) and (xiii) of paragraph 3(D) at pages 155 and 156 of the Plaint, the Plaintiffs have made out a *prima facie* case for protection of these Mutual Funds. Further, in my view, the fact that the Plaintiffs give their consent to the Draft Probate Petition, does not take the case of Defendant Nos. 1 and 2 any further.

16 For all the aforesaid reasons, pending the hearing and final disposal of the Suit, Defendant Nos. 1 and 2 are restrained by a temporary order of injunction of this Court from in any manner whatsoever dealing with or parting with or disposing of or creating any third party rights and/or interest in respect of the Mutual Funds mentioned at Serial Nos. (viii), (ix) and (xiii) of clause 3(D) at pages 155 and 156 of the Plaint.

17 The Interim Application is disposed of. In the facts and circumstances of the present case, there shall be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)