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

INTERIM APPLICATION NO. 7439 OF 2025
IN
SUIT NO. 781 OF 2009

Homai K Desai **... Applicant**

In the matter between

Shernaz P. Poonekar & Anr. **... Plaintiffs**

V/s.

Adi alias Ardeshir Irani **... Defendant**

Mr. Chirag Balsara, with Mr. Avinash Joshi i/b, Mulla & Mulla & Craigie Blunt & Caroe for the Applicant/Plaintiffs.

Ms. Alisha Lambay, i/b, Mr. Armaity Khushrusahi & Adv. Nerissa Almeida for the Defendant.

Adv. Noorain Patel, i/b, Diamondwala & Co., for the Respondent-Developer.

CORAM : FARHAN P. DUBASH, J.

DATE : 23rd FEBRUARY 2026

ORDER.:

1. The dispute between the parties centres around the estate of late Mr. Dinyar S. Irani **("the Deceased")**, who is the father of the Plaintiffs and Defendant. The Plaintiffs contend that the Deceased died intestate, which occasioned the filing of the captioned Administration Suit no. 781 of 2009 seeking letters of administration in respect of his estate. Defendant, on the

other hand, has preferred Testamentary Petition no. 64 of 2003, propounding that the Deceased left behind a last Will and Testament dated 26th May 2002 **("the Will")**. Upon caveats being filed by the Plaintiffs, the said Testamentary Petition came to be converted into Testamentary Suit no. 15 of 2003 **("the Testamentary Suit")**, which is stated to be presently ripe for final arguments.

2. Pending the outcome of the aforementioned proceedings, the Applicant has preferred the present Interim Application **("IA")** on 18th November 2025, seeking the appointment of the Court Receiver, High Court, Bombay, in respect of the following two immovable properties, which he asserts form part of the estate of the Deceased: (i) Commercial Premises no. A-5, admeasuring 1,143 sq. ft., situated in Guru Himmat Premises Co-Operative Society, Mazgaon **("the Commercial Premises")**; and (ii) Bungalow in the Parsi Colony, bearing House Nos. 81 and 82, situated at Village Devka **("the Bungalow")**.

3. It is, however, pertinent to note that upon the filing of the captioned Administration Suit, the Plaintiffs had taken out Notice of Motion no. 1205 of 2009 seeking urgent interim and ad-interim reliefs, which culminated in the passing of an order dated 6th October 2010 **("the Injunction Order")**, whereby Defendant was restrained, by way of injunction, from selling, transferring, or parting with possession of the estate of the Deceased

that is set out in Exhibit B to the plaint, which includes the Commercial Premises which are admitted to be owned by the partnership firm of M/s Kermani Transport Services, in which, the asset of the Deceased is stated to be his 60% share in the profits and losses and also the Bungalow. The Injunction Order continues to operate as on date, and it is notwithstanding the subsistence of the said order that the present IA has been preferred.

4. It is not in dispute that the Commercial Premises did not form part of the personal estate of the Deceased but was instead an asset owned by the Partnership Firm of M/s. Kermani Transport Services **("the Partnership Firm")**, in which the Deceased held a 60% share in the profits and losses, with Defendant being entitled to the balance 40% share therein. It is equally not in dispute that the Partnership Firm conducted its office and business operations from the Commercial Premises.

5. Mr. Chirag Balsara, learned Counsel appearing on behalf of the Applicant/Plaintiffs, submits that the Commercial Premises is imminently scheduled to undergo redevelopment and that it is therefore expedient that the Court Receiver, High Court, Bombay, be appointed for the adequate protection of the Commercial Premises and to ensure that the Defendant does not arrogate to himself the benefits that may accrue in the course of such redevelopment. He further submits that the transit rent and corpus that

may be received in lieu of the Commercial Premises ought to be deposited into this Court, with the distribution thereof being subject to the outcome of the pending litigation between the parties. He further urges that the authority to execute the Permanent Alternate Accommodation Agreement **("PAAA")** with the developer for redevelopment of the Commercial Premises ought to vest exclusively in the Court Receiver, to the exclusion of the Defendant. In justification of this prayer, learned Counsel submits that in the event Defendant fails to obtain probate of the Will propounded by him, both immovable properties that are the subject matter of the present IA would inure to the benefit of the Plaintiffs and Defendant jointly, with each party being entitled to an undivided one-third share in the estate of the Deceased. On these grounds, Mr. Balsara submits that the Applicant ought not to be deprived of their rightful share in such benefits.

6. Mr. Balsara further draws the Court's attention to photographs of the Bungalow and submits that the same has been left in a state of severe disrepair, with its roof having been allowed to fall into a condition of collapse. He contends that as a consequence thereof, the Bungalow has been rendered wholly uninhabitable, and on that ground, seeks the appointment of the Court Receiver with a further direction that the Bungalow be sold and the sale proceeds be deposited into this Court, with the distribution thereof

being subject to the outcome of the pending litigation between the parties.

7. *Per contra*, Ms. Alisha Lambay, learned Counsel appearing on behalf of the Defendant, opposes the reliefs sought in the present IA and submits that the same is liable to be dismissed, inasmuch as the Applicant has failed to make out any case warranting the appointment of the Court Receiver. Learned Counsel points out that it is an admitted position that the Commercial Premises did not belong to the Deceased but was an asset of the Partnership Firm, in which Defendant was the other partner, holding a 40% share in its profits and losses. She further submits that it is equally undisputed that possession of the Commercial Premises vests with Defendant, albeit in his capacity as a partner of the Partnership Firm. On this basis, she submits that Defendant ought to be permitted to execute the PAAA with the developer for redevelopment of the Commercial Premises in his capacity as partner of the Partnership Firm. She fairly concedes that upon redevelopment of the building in which the Commercial Premises are situated, the redeveloped premises allotted in lieu thereof shall be held by Defendant in his capacity as partner of the Partnership Firm, and that the 60% share of the Deceased in the profits and losses of the Partnership Firm shall be adequately protected and safeguarded in the process.

8. In so far as the transit rent and corpus are concerned, however, Ms. Lambay contends that no direction ought to be issued for the deposit thereof into Court, as sought by the Applicant, since Defendant is admittedly in possession of the Commercial Premises and is therefore legally entitled to receive the same. She further submits that even under the Will, the share of the Deceased in the Partnership Firm has not been bequeathed to the Applicant, and on that additional ground, the Applicant is not entitled to the reliefs sought in the present IA.

9. In so far as the Bungalow is concerned, Ms. Lambay submits that the Applicant has failed to make out any case warranting the appointment of the Court Receiver or a direction for its sale. She categorically denies that the Bungalow is in a dilapidated condition or that the Defendant has neglected its upkeep and maintenance. On the contrary, learned Counsel is at pains to submit that the Defendant has, since the very beginning, been regularly discharging all taxes, charges, and other statutory dues in respect of the Bungalow and has been diligently maintaining the same, without any contribution whatsoever from the Applicant in that regard. She further submits that the Bungalow has not been bequeathed to the Applicant under the Will, and on that additional and independent ground, the Applicant is not entitled to the reliefs sought in the present IA.

10. Having heard the parties and upon perusal of the papers and proceedings before this Court, I am of the view that no case has been made out by the Applicant which would entitle her to the reliefs sought in the present IA. It is an admitted position that the entire estate of the Deceased has been protected pursuant to the order dated 6th October 2010 passed by this Court whereunder, Defendant is restrained from creating third party rights. This order adequately protects the interests of the Applicant pending the outcome of the Testamentary Suit. If the Defendant succeeds in obtaining probate, then the estate of the Deceased would be administered in accordance with his said last Will, if not, then the estate would be distributed on the basis of intestacy, with each of his 3 children being entitled to a 1/3rd share therein. Moreover, in the event probate is granted, neither the Bungalow nor the 60% share of the Deceased in the partnership firm would devolve on the Applicant.

11. It is not in dispute and in all fairness, Mr. Balsara has also not contended that, the Commercial Premises cannot be redeveloped due to operation of the earlier injunction order passed by this Court. If the building in which the Commercial Premises are situated is required to be redeveloped, then it naturally follows that even the Commercial Premises will be required to be redeveloped. Instead, the Applicant seeks a share in the benefits that

would ordinarily accrue in lieu of the Commercial Premises, in the process of such redevelopment and they seek to protect the same by appointment of the Court Receiver. However, in my view, the Applicant is not entitled to the same. This is so because, admittedly, the Commercial Premises do not belong to the Deceased but instead, admittedly belong to the Partnership Firm in which, the Deceased was a partner together with Defendant. Moreover, it is also not in dispute that the Applicant is not in possession of the Commercial Premises but instead, Defendant is in possession thereof.

12. It therefore follows that since it is the Defendant who would be surrendering possession of the Commercial Premises in the course of redevelopment, the transit rent accruing therefrom would be receivable and utilizable by him in his capacity as surviving partner of the Partnership Firm, which stands dissolved upon the demise of the Deceased. This Court is unable to discern any legal basis upon which the Applicant could lay claim to the transit rent or any part thereof at this stage. The corpus received by the Defendant in the course of redevelopment would be governed by the same principle. Both the transit rent and the corpus would constitute assets of the Partnership Firm, and the estate of the Deceased would be entitled to such portion thereof as may be found payable in respect of his 60% share therein, upon the accounts of the Partnership Firm being duly drawn up and

finalised. By the same logic, the PAAA may also be executed by the Defendant on behalf of the Partnership Firm in his capacity as surviving partner.

13. However, in view of the subsisting Injunction Order dated 6th October 2010, liberty is granted to the Defendant and/or the developer who is represented by Mr. Patel in the present IA to approach this Court prior to the execution of the PAAA and obtain such orders as may be requisite in that regard.

14. In so far as the Bungalow is concerned, the Applicant has equally failed to make out any case entitling him to the appointment of the Court Receiver for the purposes of its sale. Under the Will propounded by Defendant, he has been appointed as the Executor of the estate of the Deceased and entrusted with the due execution of the testamentary wishes of the Deceased. By virtue of Section 211 of the Indian Succession Act, 1925, the estate of the Deceased vests in the Defendant in his capacity as Executor, who is thereby statutorily obligated to administer the estate upon the grant of probate and, in the meantime, to account for its due protection and preservation. It is not disputed by the Applicant that all statutory dues, taxes, and charges in respect of the Bungalow are being regularly discharged by Defendant. The Applicant merely contends that Defendant has not

adequately maintained the Bungalow, resulting in damage to its roof and structure. However, the photographs placed on record and relied upon by the Applicant does not, on a fair reading, bear out or substantiate the case so propounded by them.

15. Without prejudice to the foregoing, the present IA must fail on the further and independent ground that the Applicant has not established the "*Panch Sadachar*", the five well-settled prerequisites that are required to be satisfied before the Court may exercise its discretion to appoint a Court Receiver, which is, by its very nature, a drastic and extraordinary remedy. This consideration assumes added significance in the present case, given that an interlocutory injunction has been operating in favour of the Applicant since as far back as 6th October 2010, a period of over sixteen years. The Applicant has placed no concrete or reliable material before this Court from which it could be concluded that the Commercial Premises or the Bungalow are being wasted, damaged, alienated, or destroyed. She has further failed to demonstrate any cogent reason as to why Defendant ought to be dispossessed of the said two properties, which have been in his uninterrupted possession at least since the passing of the Injunction Order. Nor has the Applicant been able to establish that the conduct or acts of the Defendant are in any manner adverse to the interests of the Commercial Premises or the

Bungalow. On the contrary, the injunctive reliefs granted under the Injunction Order dated 6th October 2010, which have remained in operation for over sixteen years, continue to offer adequate and sufficient protection to the Applicant's interests. The balance of convenience, too, does not favour the Applicant but lies decisively with the Defendant.

16. In view of the foregoing findings, the present IA fails and is liable to be dismissed. Accordingly, the following order is passed:

:: <u>ORDER</u> ::

(A) The present Interim Application stands dismissed.

(B) There shall be no order as to costs.

(FARHAN P. DUBASH, J.)

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