

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1 OF 2020
IN
SUIT (L) NO. 6 OF 2020**

Lina Rahul Parekh ... Applicant/Plaintiff

vs.

Mohini Chandru Hingorani & Ors. ... Defendants

Dr. Birendra Saraf i/b. Dua & Associates for the Plaintiff.

Mr. P. S. Gidwani a/w. Mr. Yashesh Panjwani for Defendant nos. 1, 2 and 3.

Ms. Heena Jewani i/b. Mr. Ashutosh Marathe for Defendant no. 5.

Ms. Shradha Agrawal i/b. Rajkumar Shukla for Defendant no. 6.

CORAM : A.K. MENON, J.

DATED : 8th JANUARY, 2020

P.C.

1. Called for ad-interim reliefs. The suit is filed for administration of the estate of the deceased Smt. Ganga Kishin Matai who expired on 3rd November, 2019. According to the plaintiff the deceased died intestate and Defendant no. 1 is sister of the deceased and Defendant nos. 2 and 3 are children of defendant no. 1 who are dealing with the estate allegedly without any right thereto. Defendant nos. 4 to 9 are banks wherein the deceased is believed to hold accounts. Defendant no. 10 is a share broking firm wherein the

deceased is believed to hold demat accounts. Defendant no. 11 is a Co-operative Housing Society housing the residential flat which was used by the deceased. Exhibit A to the Interim Application discloses some of the properties forming part of the estate of the deceased including two plots of land one at Santacruz, Mumbai and another at Ajmer, Rajasthan. There are also two restaurants which are said to be carrying on business from tenanted premises adjacent to each other and situated at Dhobi Talao, Mumbai. The estate include the bank accounts, fixed deposits, shares in demat accounts, motor vehicles and jewellery.

2. Mr. Gidwani the learned Advocate for defendant nos. 1 to 3 submits that the deceased had left behind a Will in respect of which he has filed petition for probate being petition bearing (L) no. 3719 of 2019. That petition is under objection. Copy of the petition has been produced in Court today. Schedule I of the petition reveals the various movable and immovable properties. It will be appropriate to deal with the items in this schedule for the purpose of this order. The Schedule is reproduced for ease of reference.

Serial No	Particulars of properties	Valuation Rs. Ps.
	IN THE STATE OF MAHARASHTRA	
1	Right, title and interest of Flat No. 24, admeasuring approx. 1875 sq. ft. in Advent Building of Foreshore Co-op Housing Society Ltd. at 12A Gen. Jagannath Bhosale Marg, Near Sachivalaya Gymkhana, Mumbai 400 021.	8,65,05,000/-
2	Right, title and interest of Property situated at Vile Parle, Bearing CTS No.1646, 1646/1, 233, Final Plot No.55 TPS IV, admeasuring 700.sq.yds. situated at Garodia Estate, 40 feet Road, Santacruz (West) Mumbai	5,00,00,000/-

3	Tenancy Rights, Goodwill, stock in Trade in respect of Business of Harvic Cafe situated at Palekar Chambers, Dhobi Talao, Metro, Mumbai-400002 (Rs.2,733x150)	4,09,950/-
4	Tenancy Rights, Goodwill, stock in Trade in respect of Business of Kit Kat Restaurant situated at Palekar Chambers, Dhobi Talao, Metro, Mumbai-400002 (Rs.2,828x150)	4,24,200/-
5	Tenancy Rights, in respect of Room No.6 on the 2 nd floor in Chunawalla Building, 13 Dady Santok Lane, Mumbai-400002. (Rs.115x150)	17,250/-
6	Tenancy Rights in respect of Godown admeasuring 20sq.ft. on the Ground floor of Building Palekar Chambers, Anandilal Podar Marg, Near Metro, Mumbai-400002 (Rs.200x150)	30,000/-
7	Tenancy Rights in respect of Godown No.6 Wellington Terrace in Building no.6, Wellington Street, Dhobi Talao, Mumbai-400002 (Rs.321x150)	48,150/-
8	Tenancy Rights in respect of Shop no.12 Wellington Terrace in Building no.2, Wellington Street, Dhobi Talao, Mumbai-400002(Rs.296x150)	44,400/-
9	Tenancy Rights in respect of Shop no.11 Wellington Terrace No.2 in Building no.2, Wellington Street, Dhobi Talao, Mumbai-400002 (Rs.259x150)	38,850/-
10	Tenancy Rights in respect of Shop no.9 Wellington Terrace in Building no.2, Wellington Street, Dhobi Talao, Mumbai-400002 (Rs.215x150)	32,250/-
11	Tenancy Rights in respect of Shop no.4 Wellington Terrace in Building no.2, Wellington Street, Dhobi Talao, Mumbai-400002 (Rs. 276X150)	44,000/-
12	Tenancy Rights in respect of Shop no.2 Wellington Terrace in Building no.2, Wellington Street, Dhobi Talao, Mumbai-400002 (Rs.567x150)	85,050/-
13	Motor Car being Wagon-R Engine no. K10BN4609838 Chesis No. MA6EWDE1S00662017 Registration No. MH01BK4138	4,97,621/-
14	Motor Car being Maruti Dezire Engine no. K12MN2204373 Chesis No. MA3CZF63SJE344517 Registration No. MH01DB3309	8,89,500/-

15	Balance as on 31.10.2019 in Saving Bank Account with Hongkong Bank (A/c No.002-044691-006) jointly with Mr. Hiro Matai (Deceased on October 19, 2019)	1,54,219.81/-
16	Balance as on 31.10.2019 in Savings Bank account with Hongkong Bank (A/c No. 002-670065-007)	64,20,602.80/-
17	Balance as on 23.10.2019 in Savings Bank Account with HDFC Bank (A/c No.00011300005603)	12,09,864.08/-
18	Balance as on 30.09.2019 in Demat Account with DPID No. IN301151 and Client ID No.12279627 with HDFC Bank Ltd	3,90,19,186.60/-
19	Balance as on 30.09.2019 in Demat Account with DPID No. IN300142 and Client ID No. 10408273 with the The Hongkong and Shanghai Banking Corporation Ltd	9,12,416.00/-
20	Balance as on 30.09.2019 in Demat Account with DPID No. IN300513 and Client ID No. 19202482 with the Share Khan Ltd.	34,64,719.25/-
21	Balance as on 30.09.2019 in Demat Account with DPID No. IN12012200 and Client ID No. 00124222 with the Centrum Broking Ltd.	3,009.00/-
22	Fixed Deposit with The Hongkong and Shanghai Banking Corporation Ltd. under Account No.002-6700065-051	10,00,000/-
23	Fixed Deposit with The Hongkong and Shanghai Banking Corporation Ltd. under Account No.002-6700065-052	10,00,000/-
24	Axis Focused 25 Fund – Growth Mutual fund, Folio No.91040501462 No. of units-43546.480 As on 30.09.2019	2,77,218.26/-
25	HSBC Short Duration Fund – Growth Mutual fund, Folio No. 1188254 No. of units-120699.575 As on 30.09.2019	34,80,372.25/-
25	Kotak Standard Multicap Fund – Growth (Regular Plan) (Erstwhile Kotak Select Focus) Mutual fund, Folio No. 5325962 No. of units-62670.672 As on 30.09.2019	22,30,010.52/-
26	L&T Midcap Fund – Growth Mutual fund Folio No. 4614915 No. of units-10741.675 As on 30.09.2019	13,67,630.06/-
27	NIPPON INDIA BANKING FUND – DIVIDEND PLAN Mutual fund Folio No. 499115547974 No. of units-49318.176 As on 30.09.2019	23,51,490.63/-

28	SBI Magnum Multicap Fund – Regular Plan – growth Mutual fund Folio No. 20490991 No. of units-25695.980 As on 30.09.2019	12,79,929.61/-
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3. The residential flat and the aforesaid plot of land at Santacruz disclosed in Exhibit A to the Interim Application form part of the Schedule to the Testamentary Petition. Item nos. 3 to 6 are the premises from which the restaurant business is being carried on. After perusing the Schedule aforesaid Dr. Saraf states that the plaintiff does not claim any right to the premises described at item nos. 6 to 12 of the schedule in the Testamentary Petition which mention tenancy rights in respect premises at Wellington Terrance. Item nos. 13 and 14 are two motor cars. Item nos. 15 to 17 are bank accounts balances of the deceased. Item nos. 18 to 21 are the demat accounts. Item nos. 22 and 23 are Fixed deposits. Item nos. 24 to 28 are investments in mutual funds. The asset value is substantial.

4. On comparing assets listed in Exhibit “A” to the IA with Schedule 1 above, I find that the property at Ajmer, Demat Account with Sharekhan Limited, Saving Bank account with Canara Bank, Restaurant's two accounts with Allahabad Bank and two accounts with ICICI Bank (Items 3,10, and 11 to 15 respectively of Exhibit “A”) have not been disclosed in Schedule 1 to the Testamentary petition.

5. Mr. Gidwani states that on instructions from defendant no. 2 and 3 states that as far as flat no. 24, B Wing of Foreshore CHS Ltd.housing Advent is

concerned, he has no objection if the Court Receiver, High Court Bombay is appointed as Receiver with the power to grant leave and licence in respect thereof to a suitable licensee.

6. As far as property in Santacruz (West) is concerned Mr. Gidwani states that it is fully encroached. The defendants are unaware of the property at Ajmer, Rajasthan. In respect of the tenancy rights of the restaurant premises described in item nos. 3 to 6 of the Schedule, it is stated that the restaurants are currently operating on conducting basis and the defendants have no intention of surrendering the tenancy or creating any third party rights or inducting any third party. Mr. Gidwani states that all accounts will be maintained and complete disclosure in respect of restaurant business will be made on oath including identity of the parties who are said to conducting the business with supporting documents.

7. As far as the two motor vehicles are concerned neither party to this dispute is interested in using these vehicles except that these are parked in parking slots in the society where the flat is housed. In the event of a licence being granted these parking slots will be utilised will probably attract better licence fees. In that view of the matter it is agreed between counsel for the plaintiffs and defendant nos. 1 to 3 that the vehicles shall continue to remain parked on the society premises but will be maintained for which parties will arrive at suitable arrangement till a licensee is identified.

8. As far as bank accounts are concerned the accounts in Allahabad Bank and ICICI Bank at Sr. No. 12 to 15 of the Exhibit A to the Interim Application are said to be utilised by two restaurant businesses in respect of which Mr. Gidwani states the defendants will maintain accounts and disclose on oath operations in the said accounts.

9. As far as Safe deposit lockers specified in Item 17 and the jewellery at item 18 of Exhibit A to the Interim Application are concerned defendant nos. 1 to 3 are unaware of the existence of such locker or extent of jewellery if any.

10. In view of the above the following order is passed by consent of parties:

(i) There will be ad-interim order in terms of prayer clause (a) restricted to the residential flat located at Advent 12-A, Gen. J. Bhosale Marg, Mumbai. The key of the premises are presently in the custody of defendant nos. 1 to 3 and the key will be handed over by the Advocate for defendant to the Court Receiver by Friday, 10th January, 2020.

(ii) The Court Receiver shall proceed to take physical possession of the premises with due notice to the Co-operative Society and the plaintiff and defendant nos. 1 to 3 through their respective Advocate and shall after taking possession make an inventory of the contents of the suit flat. If there any valuables are found, a panel valuer shall be appointed.

(iii) The Receiver shall also ascertain the Society's outgoings in respect of the flat in question including arrears, if any. The Secretary of the Foreshore Co-operative Housing Society housing Advent shall provide the Court Receiver with all assistance in terms of disclosure of the amounts of outgoings due and arrears, if any.

(iv) Receiver is permitted to let out the suit flat to a prospective licensee after due notice to both parties and after ascertaining the best available licence fees.

(v) There will be ad-interim injunction in terms of prayer clause (b) to the extent it concerns immovable properties mentioned in Item no. 1 till Receiver takes possession of the flat and item 2 and 3 of Exhibit A as well as tenanted premises described in item nos. 4 and 5 of Exhibit "A" to the IA and detailed in items 3 to 6 of Schedule "1" above situate at Palekar Chambers and Chunawala Building.

(vi) As far as the restaurant businesses are concerned disclosure affidavit to be filed on or before 18th January, 2020. Disclosure affidavit shall also deal with items such as bank balances, deposits, shares and investments not already provided for above and forming part of Exhibit A to the interim application.

(vii) Soft copies of these accounts for upto a month prior to demises and upto date shall be provided to the plaintiff's Advocate by email within two weeks from today. Copies of all conducting agreements in respect of these two restaurants shall be provided within one week from today.

(viii) In the event such locker and jewellery at items 17 and 18 of Exhibit "A" exist there will be ad-interim order in terms of prayer clause (b).

(ix) In the meantime none of the Bank accounts disclosed in Exhibit A except those at Items 12, 13, 14 and 15 with Allahabad Bank and ICICI Bank shall be operated. None of the other bank accounts with any other bank, fixed deposits therein, demat accounts and mutual funds or shares shall be dealt with by the defendants 1 to 3 till further orders.

(x) Defendants 4 to 6, 9 and 10 shall not permit any debits in the accounts held by the deceased in her sole name or jointly with others, with them till further orders.

(xi) All concerned to act on an authenticated copy of this order.

(xii) List the motion for further ad-interim relief on 22nd January, 2020.

(A.K. MENON, J.)