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**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

..Plaintiff

v/s.

Mohini Chandru Hingorani & Ors.

..Defendants

Mr. Birendra Saraf, Sr. Counsel, a/w Shabbir Jain, Zulfiqar Jariwala i/b. Dua Associates for the plaintiff.

Mr. Gaurav Joshi a/w Yashesh Panjwani, Piyush Raheja i/b. Prem Gidwani for the defendant nos.1 & 2.

CORAM : A.K. MENON, J.

DATED : 4TH MARCH, 2020.

P.C. :

1. Vide an order dated 8th January, 2020 the Court Receiver was appointed of the suit flat, and injunctions have already been granted in relation to immovable properties, bank accounts, deposits, shares and investments. Today I have declined to grant further ad-interim reliefs in terms of prayer clause (e) and for appointment of Court Receiver in relation to the business of two restaurants viz. Harvic and Kit Kat situate near Dhobi Talao in Mumbai. Being located in a prime area which is also near Metro Cinema, Mumbai, they are extremely

popular and attract a large number of customers.

2. The reasons for declining further relief today are set out below;

The suit seeks administration of the estate of late Smt. Ganga Kishin Matai. The plaintiff is the step daughter of the deceased. According to the plaintiff she is the sole legal heir and legal representative of the deceased under Section 15(1)(b) read with Section 16 of the Hindu Succession Act, 1956. Defendant no.1 is the sister of the deceased, defendant nos.2 & 3 are the sons of the defendant no.1 and nephews of late Ganga Matai.

3. It is the contention of the plaintiff that the two restaurant businesses are being run by defendant nos.1, 2 & 3 by misusing the capital and reputation of the businesses belonging to the deceased. Dr. Saraf on behalf of the plaintiff submitted that the restaurants also served liquor and are earning large amounts of cash income and are not rendering true accounts. It is contended that the income from the businesses is about 10 lakhs per month.

4. Dr. Saraf further submitted that in the course of disclosures filed pursuant to the order dated 8th January, 2020 it has been revealed that the restaurant Harvic was initially run by a partnership firm wherein Mr. Hiroo Matai and the deceased were equal partners. Hiroo Matai

passed away on 19th October, 2019. Thereafter since the deceased Ganga Kishin Matai was living alone. The defendants and their family members also started staying in the suit flat. According to the defendants, the deceased had requested the defendants to look after the restaurant businesses from 20th October, 2019 upon the demise of Hiroo Matai. Due to her old age, Ganga Matai could not run the business on her own and therefore on 1st November, 2019 defendant nos.2 and 3 were believed to have been inducted as partners of the firm. He submitted that the deceased passed away on 3rd November, 2019 and the induction of the partners two days prior to her demise was questionable as being entered into under suspicious circumstances.

5. Upon the defendant nos.2 & 3 joining the firm, a fresh partnership deed is said to have been executed but that remains unregistered. Thereafter consequent upon her demise, the partnership business was continued by defendant nos.2 & 3. Dr. Saraf submitted that given the state of the health of the deceased who was hospitalized between 26th October, 2019 and 1st November, 2019, the defendants version was not believable. My attention was invited to medical reports of the deceased which is according to Dr. Saraf reveals that the provisional diagnosis reads as follows;

“LRTI with K/C/O is depression”

She was 87 years old upon her admission to the hospital and was admitted to hospital with difficulty in breathing, high blood pressure and was initially in the Intensive Care Unit. Therefore it is not possible to believe that the deceased could have executed the partnership deed. On 27th October, 2019 the medical reports of the deceased (see page 630) reveal that deceased was irritable and not co-operative. She was administered the drug Serenace to calm her down. On the next day, she was better but she had no recollection about the panic/psychosis attack she had suffered earlier. She was, however, on medication and continued to be administered Serenace on 28th October, 2019. Thereafter she appears to have been discharged but her medical condition was not good.

6. Dr. Saraf submitted that the partnership deed revealed that the defendant nos.2 & 3 had entered into a Conducting Agreement with one Yazdan Jehangir Irani in respect of both these restaurants and the returns of the firm which have been disclosed indicate that the net profit earned by these restaurants was only 1.69% and 1.24% respectively. The Conductor with whom the agreement has been reached has in fact proposed payment of Rs.90,000/- p.m. for conducting Kit Kat Restaurant and Rs.65,000/- p.m. for Harvic Restaurant. This itself shows that there was large scale suppression of income. Generation of cash income was obviously suppressed since in

the year 2018-19 this net profit was only Rs.1,17,844/- and Rs.38,242/- respectively. When the income tax records were compared to the conducting fees, it was evident that there is much more income than what is disclosed. Dr.Saraf submitted that it is necessary that the Court Receiver, High Court, Bombay be appointed as Receiver of the said two restaurants and thereupon the Receiver could call for bids from interested parties and the highest bidder could be appointed as an agent for conducting the restaurant especially since the purported conductor is willing to pay 9 times the disclosed annual profit in respect of Kit Kat and 20 times profit disclosed for Harvic. It is contended that the restaurants occupying an area of 4000 sq.ft and it is appropriate that the same be protected. He submitted that if the Court Receiver is appointed the defendants could also bid for conducting the business.

7. The application is opposed on behalf of the defendants by Mr. Joshi who denied the plaintiffs contentions. According to Mr. Joshi the deceased was hale and hearty before her hospitalization and even during her stay in hospital and after her discharge she was fully aware of what she was doing. She was fully conscious of the fact that she was executing the partnership deed and the contentions of the plaintiffs was incorrect. She has executed a Will in respect of the petition for

probate is pending in this Court. He invited my attention to the additional affidavit in reply of defendant no.2 dated 25th February, 2020 and the medical reports annexed thereto, in particular the discharge summary. According to Mr. Joshi the deceased was completely in her senses and was competent to deal with her business interests. He conceded that the deceased was admitted to hospital on 26th October, 2019 with a cough and elevated blood pressure levels but was not seriously ill. Her discharge reports show that her health was good at the time of discharge. He relied upon the photographs of the deceased while she was in hospital and which were annexed to the affidavit. He further submitted that in September and October 2019 deceased issued her own cheques, maintained records of the cheques issued in the counterfoil and also was a member and regular visitor at the Cricket Club of India which she would visit daily. Certain bills issued by the said club were relied upon in this behalf. He therefore denied that further reliefs were required to be granted.

8. I have heard the rival contentions at some length. The principal reason for the plaintiff to seek the appointment of the Court Receiver, High Court, Bombay is the contention of the plaintiff that the deceased being 87 years old and being indisposed was seriously ill, was suffering from depression and was being administered serenace, a drug which is

administered to treat anxiety and hypertensive patients. It was also contended that the deceased could not have dealt with her business interests in that condition. The nature of the business which is believed to generate substantial cash income which is not accounted has also been pressed into service in support of the motion. The appointment of the Court Receiver it is contended would help secure amounts of revenue the business generates.

9. I am unable to accept the contentions of Dr. Saraf. The record indicates that the deceased appeared to be in charge and control of her own affairs and was able to take her own decisions. Indications are that the defendants version was more likely to be correct than that of the plaintiff. It is not possible to accept the plaintiffs case that she has been in close contact with the deceased as contended. The plaintiff is the daughter of one Kishore Ghanshamdas Matai. The plaintiff's father was the husband of the deceased and died intestate on 16th July, 2008. The mother of the plaintiff was the first wife of Kishin G. Matai and had expired on 18th June, 1981. The deceased did not have any issues of her own and it is therefore contended that the plaintiff is the sole heir. This aspect, however, will depend whether the Will is proved or otherwise. It cannot be disputed that a Will is intended to interfere with intestate succession.; whether the plaintiff is the only heir or not;

whether the plaintiff is entitled to claim on the basis of intestate succession are aspects that will be gone into a later stage. The plaintiffs case is that upon demise of Kishin G. Matai, the plaintiff had with the consent of the deceased obtained a letters of administration of the estate of Kishin Matai. A grant was issued on 20th January, 2009 in Testamentary Petition no.929 of 2009. The deceased thereafter challenged the grant of letters of administration by filing a petition for revocation. At that stage, consent terms are arrived at between the deceased and the plaintiff. Disputes were resolved and the estate of Kishin Matai was partitioned. The younger brother of Kishin Matai, Hiroo Matai had also stayed with the deceased. In fact late Hiroo Matai was looking after the deceased and took care of her after the demise of Kishin Matai. According to the plaintiff, the deceased was frail and suffering from ailments concluding psychosis and mental illness for 6 years as pleaded in the plaint and that she was in irritable condition after the demise of Hiroo Matai on 19th October, 2019. It is also the plaintiffs case that her extremely critical condition did not improve till her demise. The deceased was unable to recognize the plaintiff and/or her husband or have a conversation with them and her mental state had deteriorated. The defendants had allegedly taken charge of the estate including the restaurant business.

10. In view of the earlier order dated 8th January, 2020, I am not required

to consider the aspects pertaining to the other assets. This application is restricted to the appointment of Court Receiver of the restaurant business. In this respect, I find that the plaintiff has not succeeded in making out a prima facie case that the partnership deeds dated 1st November, 2019 could not have been executed by the deceased. Perusal of the medical records reveal that the condition of the deceased at the time of discharge was good as seen from the discharge summary appearing at page 615 of the interim application. Furthermore, I find that apart from anxiety despite the earlier record of the plaintiff as of 31st October, 2019 (see page 637) the condition of the deceased was shown as "*better and vitally stable*". Further the reason for admission to hospital is recorded at page 645 as "*Cough expectoration and breathlessness*". Previous hospitalization is shown as nil. Primary language of the deceased was shown as English, Hindi and Marathi, all of which indicate that she was well conversant in those languages and appears to have been recorded as such by the hospital upon admission and after verification. The general appearance of the deceased was "*well nourished*" and the fall screening indicated that she was not susceptible to risk of falling and had no history of falling, did not have any confusion. She was not using walking aids and not under any medication, pertinently she was not disoriented.

11. Read with this, I have observed that at page 734 the photograph of the deceased taken at Sunday 27th October, 2019. The deceased is seen to be sitting up and having her meal by herself. Exhibit D to the additional affidavit indicates that deceased had issued cheques to the Foreshore Co-operative Housing Society housing the suit flat, withdrawn cash using cheques drawn to "Self" in October 2019, all of which are said to be in the handwriting of deceased and this fact is not disputed. Although Mr. Joshi sought to rely upon a Video of the deceased reading her Will prior to its execution, I have neither viewed the video nor have I placed any reliance thereon.

12. There is also substantial merit in the defendants contention that the deceased was regularly attending the Cricket Club of India. Exhibit D to the affidavit dated 25th February, 2020 are numerous bills for the month of May 2019 and onwards till October 2019. The bill dated 31st October, 2019 (page 607) shows that the deceased attended the Club on every day between 1st October, 2019 to 18th October, 2019 and thereafter attended the Club on 24th October, 2019. On many of these dates she had incurred expenses in the Veranda, thrice at bakery counter and once in the card room. She incurred expenses of Rs.2,209/- during that month. Prima facie, it is evident that the deceased was hale and hearty till that date. There is no reason to disbelieve that upon discharge the deceased was as in good health and

I find no reason to doubt the certification by the hospital.

13. At the time of her discharge, her condition appears to such that she may well have been amenable to execution of the partnership deed on 1st November, 2019. The deceased was obviously conscious and well oriented. There is nothing to indicate that her understanding or comprehension was affected and that she was not competent to execute the deed of partnership. The visits to the club clearly indicate that she was regular in her visits to the club. The bills do not indicate that any guest accompanied her. No guest fees are seen to have been paid which is further indication of the fact that she used the club facilities by herself. The plaintiffs have therefore failed to make out a prima facie case of appointment of Court Receiver and it does appear that deceased was capable of taking her own decisions in relation to her affairs including the restaurant.

14. In the circumstances, I pass the following order;

- (i) Further ad-interim relief in relation to the restaurant businesses of Harvic and Kit Kat is refused.
- (ii) The defendants shall maintain the accounts in respect of these restaurant businesses viz. Harvic and Kit Kat and ensure that the Conductor shall also maintain accounts.

(iii) Interim application to come up in the normal course. Needless to mention the observations in this order as to the health and mental faculties are but prima facie observations which justify declining the relief seeking appointment of the Court Receiver.

(iv) Costs to be costs in the cause.

(A.K. MENON, J.)

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