

HARSHADA H. SAWANT
(P.A.)

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

SUIT (L) NO.14207 OF 2022

Sabina Lakdawala .. Plaintiff
Versus
Feroz Lakdawala and Ors. .. Defendants

WITH
INTERIM APPLICATION (L) NO.14578 OF 2022

Sabina Lakdawala Applicant /
.. Original Plaintiff
Versus
Feroz Lakdawala and Ors. .. Defendants

WITH
INTERIM APPLICATION (L) NO.33987 OF 2022

Sabina Lakdawala Applicant /
.. Plaintiff
Versus
Feroz Lakdawala and Ors. .. Defendants

WITH
INTERIM APPLICATION (L) NO.2422 OF 2023

Sana Achwa Applicant /
.. Defendant No.4

IN THE MATTER BETWEEN:

Sabina Lakdawala .. Plaintiff
Versus
Feroze Lakdawala and Ors. .. Defendants

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- Mr. M. J. Nedumpara a/w. Ms. Maria Nedumpara and Ms. Neha Mishra i./by Nedumpara and Nedumpara, Advocates for Plaintiff.
 - Mr. Kaustubh Gupte a/w. Mr. Aditya Talpade, Mr. Pratik Karande and Ms. Poonam Ashar, Advocates for Defendant Nos.1, 2, 4 to 7.
 - Mr. Mutahha Khan i./by Mr. Mohamed Rehan Chhapra, Advocate for Defendant No.3.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 26, 2023

P.C.:

1. Heard Mr. Nedumpara, learned Advocate for Plaintiff, Mr. Gupte, learned Advocate for Defendant Nos.1, 2, 4 to 7 and Mr. Khan, learned Advocate for Defendant No.3.

2. Pursuant to order dated 13.04.2023 an Affidavit of disclosure with supporting documents has been filed by Defendant No.1 who is in control of properties of deceased as directed by this Court.

3. At the outset, Mr. Gupte would fairly concede that if there are any inadequacies in the said Affidavit of disclosure, the Defendant No.1 shall make it good subject to directions passed by this Court. It is *prima facie seen* on the face of record that the order passed by this Court is not complied with by the Defendant No.1 in letter and spirit considering that he is in the entire and total control of the properties of the deceased.

4. I have heard Mr. Nedumpara, learned Advocate for Plaintiff and Mr. Khan, learned Advocate for Defendant No.3 at length and they have urged that proper / complete and appropriate disclosure in compliance of the orders passed by this Court is not done.

5. I have also heard Mr. Gupte for Defendant No.1. After

hearing the learned Advocates and perusing the record, as also, the Affidavit of disclosure filed by Defendant No.1, I am constrained to pass the following order.

6. This in view of the fact that the record in the present case clearly indicates that several substantial properties are controlled by Defendant No.1 but despite the order passed by this Court, Defendant No.1 has not given a complete and adequate disclosure as directed by this Court.

7. In order to have a clear picture about the grievances made by the Plaintiff and Defendant No.3, it would be worthwhile to notify some of the substantial properties which are under the control of Defendant No.1 so as to now extract and seek a complete disclosure from Defendant No.1 in respect thereof, as also, about the proceeds which the Defendant No.1 alone is now receiving from those properties, which in fact according to Plaintiff and Defendant No.3 belong to the deceased. This is done so in view of the fact that despite three specific orders passed by this Court earlier it is now seen that Defendant No.1 is still evading a complete disclosure. Though it cannot be said that he has not complied with the orders, but the disclosure made is *prima facie*, inadequate.

8. At the outset Mr. Nedumpara and Mr. Khan have taken me through the details of the subject properties belonging to the deceased

which are substantial in terms of returns and details of the :

- (i) Property known as Evershine Keys Resort at Mahabhaleshwar is a resort property controlled by the Defendant No.1. It has a fairly large and substantial valuation. According to Plaintiff and Defendant No.3, this property is worth Rs.300 Crores. Either Defendant No.1 is conducting business in the said property himself or he may have given it on conducting basis to some third party. Such disclosure is required to be made. It is not made. That apart, the income received from this property which *prima facie* will be substantial is required to be disclosed. Defendant No.1 is therefore directed to disclose the Bank statements in respect of proceeds of this particular property, where they are deposited and all such necessary and relevant details with supporting documents. In the event if Defendant No.1 fails to disclose the income from this property in his hands, as also, what income he has received since 09.09.2021 i.e. date of demise of deceased who was the owner of this property, this Court shall be constrained to pass orders for appointing the Court Receiver on the next date, subject to hearing the Defendant No.1.

(ii) Next is a property known as Roxy Theaters Private Limited situated at Opera House, Mumbai. A limited disclosure is made that an amount of Rs.4.67 Lakhs is received per month as rent. However on plodding, Mr. Gupte has fairly conceded that the Agreement of letting is for 364 weeks and at present Rs.1,37,300/- is received per week. Learned Advocate for Plaintiff would submit that there is a cash element involved also which is to the extent of 50 % which the Plaintiff was receiving during the life time of the deceased but has been stopped since the demise of her husband and in that view of the matter, a question is put to Mr. Gupte to make a complete disclosure on this aspect also. All monies received since 09.09.2021 shall be disclosed.

(iii) Next is a property known as Empire Studio situated at Veera Desai Road, Andheri, the Agreement of which is dated 04.07.2020 and has a tenure upto 2027. In respect of this Studio property which is worth Rs.300 Crores according to the Plaintiff and Defendant No.3, Rs.12,00,000/- has been disclosed as receipt per month. However the deposit in respect of this property is not disclosed and the same shall be disclosed. A similar

grievance with respect to receipt of cash element is once again raised by the Plaintiff which the Defendant No.1 is directed to address.

- (iv) Next is a property known as Suncity Theatres Private Limited situated at Vile Parle. The disclosure of rent is Rs.9.95 Lakhs per month. The documents in respect of this property is disclosed. However the disclosure of proceeds in hands of Defendant No.1 needs to be disclosed on basis of Bank Accounts / statements where the said sale proceeds are deposited.
- (v) Next is a property known as Empire Audio Centre Private Limited situated at Andheri (West) where the disclosure of rent shown as Rs.9,02,513/- per month. Similar directions in this property are also issued to show the entire proceeds of this property in the hands of Defendant No.1 pursuant to demise of the deceased owner.
- (vi) Next is a property known as Woodrow Estate situated at Veera Desai Road, Andheri. Mr. Gupte would contend that it is a shop and Rs.3,00,000/- per month is received as rent. Mr. Nedumpara and Mr. Khan both would however on instructions would contend that this is a property having 100 rooms and a substantial property.

Mr. Gupte is directed to take appropriate instructions and come clean on this aspect failing which in the event of appointment of Court Receiver the truth will be revealed.

(vii) Next is a property known as Dukanwala Medical shop and Nursing Centre run by a person called Abdulla Patel as partner at Mumbai Central. According to Plaintiff an amount of Rs.7,00,000/- per month was received by her during the lifetime of the deceased directly from Mr. Abdulla Patel as the deceased's share but pursuant to his demise receipt of income from this particular property has been stopped. Mr. Nedumpara would submit that above proceeds from this property were paid to the Plaintiff till June, 2021 regularly on monthly basis until she was evicted from her residence by the Defendant No.1. Mr. Gupte would however submit that this property belongs to a complete third party / entity and virtually has no nexus / entitlement whatsoever with the deceased. Be that as it may, if that be the case all such relevant details with supporting documents shall be placed on record by the Defendant No.1.

(viii) Next is a property comprising of three flats in a building called Pushpa Kunj at Bandra as informed by Plaintiff and

Defendant No.3. No disclosure whatsoever is made by Defendant No.1 in respect thereof. Defendant No.1 is put to notice that disclosure will have to be made failing which this Court shall have no option than to appoint the Court Receiver to unearth the truth.

(ix) Next are two specific flats situated at Santacruz about which disclosure is made but it is only to the effect that an amount of Rs.60,000/- per month is received as rent. On the face of record, Mr. Khan, learned Advocate for Defendant No.3 would submit that it is unbelievable and unfathomable that an amount of Rs.60,000/- could be received as rent for the two flats of Santacruz. The figure of rent is under valued. Obviously this is again without any disclosure. Defendant No.1 is directed to specifically disclose the leave and license Agreement and all such necessary details including the amount of security deposit and the license fee / rent received by the Defendant No.1 in respect of these two flats at Santacruz in his hands and the bank account along with all supporting documents pursuant to demise of the deceased who is the owner of these two flats.

(x) Next property brought to my notice are two specific

penthouses (immovable properties) which are numbered as 1102 and 1103 in an under construction building called Exotica on Juhu Tara Road. No disclosure whatsoever has been made by Defendant No.1 about these two flats / penthouses. Defendant No.1 is put to notice that complete disclosure will have to be made by him failing which the Court Receiver will be appointed to unearth all details and take care of all such properties which the Defendant No.1 is evading to disclose.

- (xi) Next is another immovable property i.e. land admeasuring 10 Acres approximately situated at Lonavala standing in name of deceased which is under the control of Defendant No.1. No details of this property is also disclosed by Defendant No.1. No other details are even disclosed by the Plaintiff and Defendant No.3. Parties are directed to disclose the details of this land from the revenue record which are now available online rather than make bald submissions. If, revenue details are provided only then appropriate orders can be passed;
- (xii) Next is another immovable property admeasuring approximately 100 Acres according to Plaintiff and Defendant No.3 situated at Panchghani, Maharashtra. Once again no disclosure is made by the Defendant No.1.

(xiii) Next is another immovable property admeasuring approximately 3 Acres in a place called Dhar in Madhya Pradesh. No disclosure of this property is made by Defendant No.1. Regarding the Panchghani and this property, once again adequate details should be provided by Defendant No. 1.

(xiv) Next is another under construction property in Khar about which no documents are disclosed by the Defendant No.1.

9. Apart from the above properties there are several other properties according to the Plaintiff about which disclosure is not made or is inadequate. Plaintiff has filed Interim Application (L) Nos.33985 of 2022 and 33987 of 2022 seeking disclosure of the details of properties and proceeds received from the properties belonging to the deceased in the hands of Defendant No.1. It is seen that in paragraph No.12 of the Interim Application (L) No.33985 of 2022 details of 25 specific properties have been given by the Plaintiff. Till today, no Affidavit-in-Reply thereto whatsoever has been filed by Defendant No.1 except the disclosure now made, which is also inadequate. *Prima facie* this Court is of the opinion that Defendant No.1 is attempting to evade complete disclosure of the properties in his custody / possession / control to this Court. This is evident because a limited disclosure is now made by Defendant No.1 in his Affidavit pursuant to three orders passed by this Court. However, Mr.

Gupte would submit that apart from the above properties with respect to the properties which are mentioned in paragraph No.12 adequate disclosure and all such relevant details shall be placed in the Affidavit-in-Reply to be filed to the Interim Application. Such Affidavit-in-Reply is directed to be filed within a period of four weeks from today and shall be served on the learned Advocates for Plaintiff and other Defendants. Rejoinder, if any, be filed within one week thereafter.

10. There is one more aspect which requires a mention. Both Advocates, Mr. Nedumpara and Mr. Khan, learned Advocates appearing for the Plaintiff and Defendant No.3 would submit that Defendant No.1 is ingeniously attempting to reduce the right, title and entitlement of the deceased in 15 companies, the list of which is given by the Plaintiff in Interim Application (L) No.33987 of 2022 wherein it is the Plaintiff's case that the deceased had a 99% shareholding in most of the companies at the time of his demise or for that matter a substantial share.

11. Both learned Advocates have in fact informed the Court that by virtue of issuance of fresh shares by the Defendant No.1 unto himself, the Defendant No.1 has enriched himself and thus become a majority shareholder in the subject 15 companies which are in fact under his control and which apparently control most of the immovable properties. They would submit that by virtue of such an act of Defendant No.1, the shareholding of the deceased has been reduced to

19% in most of the companies. This is a cause of serious concern considering that by virtue of circumventing the provisions of law in this fashion and manner, the Defendant No.1 is virtually usurping the rights of the other co-sharers in the subject properties which admittedly belong to the deceased. Under the Sharia Law, the Plaintiff is entitled to 12.96 %, Defendant No.3 is entitled to 21.875%, the Defendant No.1 is entitled to 43.75% and Defendant No.4 is entitled to 21.875% share in the property of deceased.

12. Though Plaintiff would otherwise contend that Plaintiff being the wife of the deceased is entitled to 50% of the entire property. However this question can be answered later.

13. In view of the order passed today and the three previous orders, it is directed that Defendant No.1 now file a complete Affidavit of disclosure as also Affidavit-in-Reply to the Interim Application No.33985 of 2022 and Interim Application No.33987 of 2022 and make a complete disclosure with all supporting documents and bank statements. In the event if Defendant No.1 attempts to now circumvent the orders passed by this Court as also today's order, it is clarified that this Court shall be constrained to appoint the Court Receiver in respect of all properties of deceased, known as well as unknown to the Plaintiff and pass appropriate directions in that respect.

14. Mr. Gupte in his brief reply would submit that there are two

specific immovable properties namely property in a building called Grace Heritage and one shop which are under the control of the Plaintiff. The Plaintiff acknowledges and accepts the same. The same yardstick that is applicable to the Defendant No.1 who is in the control of various properties belonging to the deceased shall be applicable to the properties which are under the control of the Plaintiff, as also, any other Defendant for that matter which are known and unknown and which belong to the deceased. Pleadings in Interim Applications filed by Plaintiff and complete disclosure Affidavit by Defendant No.1 be filed within four weeks with all supporting documents and Bank statements as also giving details of valuation of the subject properties. Both parties are directed to give the details of valuation of the subject properties according to them, as the Plaintiff and Defendant No. 3 have submitted that the valuation of these properties controlled by Defendant No. 1 is substantial and running into several hundred crore. Such details shall also be filed on affidavit.

15. Stand over to **08th June, 2023.**

H. H. SAWANT

[MILIND N. JADHAV, J.]