

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 858 OF 2022
IN
SUIT NO. 244 OF 2021

Pankaj M. Shah ..Applicant/Orig.Defendant No.2
IN THE MATTER BETWEEN
Shilpa J. Jain ..Plaintiff
V/s.
Vijay M. Shah & Anr. ..Defendants

WITH
INTERIM APPLICATION NO.874 OF 2022
IN
SUIT NO. 244 OF 2021

Shilpa J. Jain ..Applicant
Vs.
Vijay M. Shah @Chowatia & Anr ..Defendants

Mr. Prasad M. Gaonkar, for the Orig.Plaintiff.
Mr. Rohan Sawant a/w Mr. Archit Shah i/b M/s Manilal Kher Ambalal
& Co, for the Applicant in IA.858 of 2022 and for Defendant No.2 in
Suit No.244/2021.
Mr. Karl Tamboly a/w Anuj Desai & Aditya Singh i/b Lalla & Lalla, for
Defendant No.1.

CORAM:- **B. P. COLABAWALLA,J.**
DATE :- **JUNE 29, 2022.**

P. C.:

1 Mr. Tamboly, the learned counsel appearing on behalf of Defendant No.1 states that Defendant No.1 waives service of the writ of summons and that Defendant No.1 shall file his Written Statement within a period of six weeks from today. The said statement is accepted.

2 The following order is passed by consent of the Plaintiff and the Defendants:

(A) MOVABLE ASSETS:

a. The Court Receiver, High Court, Bombay is appointed as a Receiver of the movables described below which form part of the estate of the late Mr. Mulchand Ratanchandji Shah and the late Mrs. Chandanben Mulchand Shah (“**the deceased parents**”) with the power to take possession of the Bank Accounts, Bank Lockers, Fixed Deposits and all other valuables and receipts lying in the said accounts and lockers with power under order XL Rule 1 of the Code of Civil Procedure, 1908 to make inventory, take photographs and seal the movables as under:

i. Bank Accounts:

a. Bank of India, Opera House Branch, Account No. 07610110009408 in the name of Mr. Mulchand Ratanchandji Shah and also fixed deposit receipts connected therewith.

b. Bank of India, Opera House Branch, Account No. 20307 in the name of Mulchand Ratanchandji Shah.

c. Bank of India, Walkeshwar Branch in the name of Mr. Mulchand Ratanchandji Shah.

d. Bank of India, Walkeshwar Branch in the name of Mrs. Chandanben Mulchand Shah.

e. Bank of India, Opera House Branch, Account No. – 007610110011065 in the name of Mrs. Chandanben Mulchand Shah and also fixed deposit receipts connected therewith.

f. Canara Bank, Prarthna Samaj Branch, Account No. 0204101029944 in the name of Mrs. Chandanben Mulchand Shah and Mr. Mulchand Ratanchandji Shah and fixed deposit receipts connected therewith.

g. Bank of Baroda, Malabar Hill Branch, Account No. 060301/3357 in the name of Mrs. Chandanben Mulchand Shah and Mr. Mulchand

Ratanchandji Shah and fixed deposit receipts connected therewith.

h. Bank account, Fixed. Deposits and Lockers in Rajasthan Marudhara Gramin Bank Ltd. at Mandar, Rajasthan.

i. Bank account and Fixed Deposits in Adarsh Co-Operative Bank Ltd., Mandar, Rajasthan.

ii. Bank Lockers:

a. Locker of Mr. Mulchand Ratanchandji Shah in Samriddhi Safe Deposit Vaults Pvt. Ltd., 49, Dhanji Street, Mumbai – 03.

b. Locker of Mrs. Chandanben Mulchand Shah in Bank of India, Walkeshwar Branch, Mumbai – 400 006.

c. Locker of Mrs. Chandanben Mulchand Shah in Bank of India, Palanpur (Gujarat Branch)

d. Locker of Mr. Mulchand Ratanchandji Shah in Bank of India, Walkeshwar Branch, Mumbai – 400 006.

e. Locker of Mr. Mulchand Ratanchandji Shah in Bank of India, Palanpur (Gujarat Branch)

f. Locker of Mr. Mulchand Ratanchanji Shah and Mrs. Chandanben

Mulchand Shah in Marudhara Gramin Bank Limited at Mandar, Rajasthan.

g. Locker of Mrs. Chandanben Mulchand Shah in Canara Bank, Prathana Samaj Branch, Bombay – 400 004.

h. Locker of Mr. Mulchand Ratanchanji Shah in Banaskantha Cooperative Bank, Igdah Road, Palanpur, Gujarat

i. Locker of Mrs. Chandanben Mulchand Shah in Banaskantha Cooperative Bank, Igdah Road, Palanpur, Gujarat

j. Locker of the deceased parents in Adarsh Co-Operative Bank, Mandar, Rajasthan.

iii. Shares and Stocks:

a. Array Com (India) Ltd.

b. Jindal Steel Ltd.

c. Reliance Power

d. Himadri Chemicals

e. Hindalco Ltd.

f. United Phosphorus Ltd.

g. Savita Chemicals Ltd.

h. Reliance Petroleum Ltd. (Tradeable Warrants)

i. Reliance Petroleum Ltd.

j. Reliance Industries Ltd.

k. Reliance Capital Venture Ltd.

l. Reliance Natural Resources Ltd.

m. Reliance Energy Ventures Ltd.

n. Reliance Communication Ventures Ltd.

o. Gujarat Ambuja Cement

b. Defendant No.1 has stated that he is not aware of the Bank Accounts of the deceased parents mentioned at Sr. Nos. (g) and (h) above; the Bank Lockers of the deceased parents at Sr. Nos. (f) to (i) above; and the Shares of deceased parents of the companies mentioned at Sr. Nos. (a) to (f) and (h) to (n) above.

c. Defendant Nos. 1 & 2 state that they are not aware of the Bank Account of the deceased parents mentioned at Sr. No. (i) above; and the Bank Locker at Sr. No. (j) above.

d. As regards the bank accounts listed above, the Court Receiver shall take possession and control thereof and shall be entitled to operate the same for implementing this order. As regards the bank lockers listed above, the Court Receiver shall take possession thereof, open the same

and prepare inventory of its contents along with photographs and thereafter seal the said bank lockers. In respect of the lockers and the bank accounts not accepted by all the parties, or in respect of which exact details are not available, the Court Receiver shall address appropriate communication/s to the banks and ascertain whether the same belonged to the deceased parents, and thereafter take possession thereof, open the same and prepare inventory of its contents, along with photographs and thereafter seal the said bank lockers. As regards the shares listed above, the Court Receiver shall address communications to the above companies and *inter alia* apply for issuance of duplicate share certificates of deceased parents, if any, held by them in the said companies. The aforesaid exercise shall be completed by the Court Receiver within a period of 12 weeks from today and a report shall be filed before this Court indicating the steps taken for implementation of the order.

e. The cost, charges and expenses of the Court Receiver, High Court, Bombay incurred for the aforesaid exercise shall be paid from the bank account of the late Mrs. Chandanben Mulchand Shah with Canara Bank, Girgaum Branch bearing Savings Account No.0204101029944. This will be subject to any final orders passed in the suit.

f. The parties are directed to assist the Court Receiver and his

representatives to comply with the orders passed by this Court and take possession of the movables set out above.

(B) IMMOVABLE ASSETS:

- a. According to the parties, the following immovable properties form part of the estate of the deceased parents:
 - i. Flat No. 16, Purab Apartment, 6th Floor, Walkeshwar Purab Cooperative Housing Society Limited, 42, Ridge Road, Opp. Babu Amichand Pannalal Jain Temple, Walkeshwar, Mumbai - 400 006
 - ii. Flat No. 101, A Wing, Venkatesh Kirti Building No. 6, Venkatesh Kirti Cooperative Housing Society Limited, Station Road, Bhayandar West, Thane – 401101
 - iii. Share of the deceased father in Flat No. 102, A Wing, Venkatesh Kirti Building No. 6, Venkatesh Kirti Cooperative Housing Society Limited, Station Road, Bhayandar West, Thane – 401101, as per the Share Certificate and Sale Deed executed in respect of the flat.
 - iv. Residential Flat No. A-301 admeasuring 851 sq. ft. MOFA Carpet area equivalent to approximately 881 sq. ft. RERA carpet comprising of 3 bedrooms, hall and kitchen, 3rd floor, Bhanu Jyoti (new building to be constructed upon redevelopment)
 - v. Land admeasuring 8158 square feet, bounded by towards North by the House of Mr. Chetankumar Shantilalji Agrawal and Mr.

Bhanwarlal Motilalji Tank

- vi. Land admeasuring 240.25 square feet bounded by towards North and East by property of the vendor Mr. Soma Ruda Kalbi
- vii. Land admeasuring 972 square feet bounded towards North by house of Mr. Soma Ruda Kalbi
- viii. Land admeasuring 6554 square feet bounded by towards north by houses of Mr. Vishang Kumar Shah, Mr. Soma Ruda and Mr. Chuna Suthar
- ix. Land admeasuring 1591.25 square feet bounded by towards North by Public Road, towards South by house of Mr. Harji Chela Kalbi, towards east by 4 1/2 feet road going towards house of Mr. Harji Chela Kalbi and towards West by house of Mr. Rama Kalbi after 3 feet land
- x. Ground plus two storied house at Mandar, near Kaniya Shala, Tehsil Reodar, District Sirohi, Rajasthan – 307 513.
- xi. New House that is under construction at Mandar, Near Kaniya Shala, Tehsil Reodar, District Sirohi, Rajasthan – 307 513.

b. Defendant No.2 is desirous of carrying out valuation of the above listed immovable properties at his own expense. The costs incurred by the Defendant No. 2 at this stage, shall be subject to orders that may be passed by this Court in the present suit. By consent of the parties,

Mr. Amol Shetgiri of M/s. Shetgiri and Associates is appointed as the valuer to carry out valuation of the above listed immovable properties and the parties have agreed to accept the valuation arrived at by him. The Valuer is requested to carry out the aforesaid valuation within a period of 8 weeks from today and the valuation reports shall be filed in court within the said period.

c. The parties hereto shall permit the valuer to carry out the valuation of the immovable properties and they shall not obstruct the same in any manner whatsoever and shall always cooperate and permit smooth access to the valuer to comply with this order. M/s. Shetgiri and Associates shall give at least 72 hours' notice by email to the parties of the proposed visit before visiting the properties situated in Mumbai/Thane and at least 1 weeks' notice before visiting the properties situated in Rajasthan. The email of the Plaintiff is jigneshmetal@gmail.com; of Defendant No.1 is jainvijay327@gmail.com and of Defendant No.2 is pash.international1@gmail.com. Defendant No.1 and/or Defendant No.2 shall be available themselves and/or make the keys available through their representative for access of all the properties in entirety without blocking access to any area by the representative of the Valuer.

d. Defendant No.1 shall deposit all the income or other benefits

henceforth derived pursuant to the Leave and Licence Agreement dated 14th February, 2022 [in respect of Flat No. 101 at Sr no. (ii)] and Permanent Accommodation Agreement dated 15th February, 2022 [in respect of Flat No. A-301 at Sr no. (iv)] in full (without any deductions/reductions) including all future rent, income and receivables therefrom in the bank account of the late Mrs. Chandanben Mulchand Shah with Canara Bank, Girgaum Branch bearing Savings Account No.0204101029944 on or before the 15th of every month with intimation to the Court Receiver and the Plaintiff and Defendant No.2.

e. It is clarified that the entering into of the Leave and Licence Agreement dated 14th February, 2022 by Defendant No.1 in respect of Flat No. 101, A Wing, Venkatesh Kirti Building No. 6, Housing Limited, Station Road, Bhayandar West, Thane – 401101 or the Permanent Accommodation Agreement dated 15th February, 2022 executed by Defendant No.1 in his own name in respect of flat No. A-301 Bhanu Jyoti Cooperative Housing Society Limited, Opp. Bank of India, Nivetia Road, Malad East, Mumbai – 400 064 pending the suit, does not confer any exclusive right, title and/or interest in favour of Defendant No.1 in respect of the said flats or part thereof.

f. It is also clarified that the Court Receiver is appointed only in respect of the movables forming part of the estate of the deceased parents and

not in respect of the any other property or asset.

g. The Court Receiver shall make payment of all the amounts that may become due in respect of all the movable and immovable properties of the deceased parents including the immovable property which is subject matter of the Permanent Accommodation Agreement dated 15th February, 2022 and shall take necessary steps for payment/recovery of tax liabilities in respect of the estate of the deceased parents. The aforesaid payments shall be made out of the funds available in the bank account of the late Mrs. Chandanben Mulchand Shah with Canara Bank, Girgaum Branch bearing Savings Account No.0204101029944 subject to the availability of funds. Whenever any party files any application with the Court Receiver requesting to make payment of any amounts, the Court Receiver shall forthwith intimate the same to the other parties.

h. It is clarified that the Court Receiver, High Court, Bombay shall make payment of all amounts, liability whereof has arisen till date in respect of the immovable properties mentioned at Sr. Nos.(i), (x) and (xi). Further, any payment in respect of the maintenance or any other liability which arises henceforth [in relation to properties at Sr. Nos.(i), (x) & (xi)] shall be borne by Defendant No. 1 in respect of the immovable

property at Sr. Nos. (i) and (x) and by Defendant No. 2 in respect of the immovable property at Sr. No. (xi).

i. As there are two houses at Mandar, Rajasthan, more particularly, the Old house, Near Kaniya Shala, Tehsil Reodar, District Sirohi, Rajasthan – 307 513 [as mentioned at Sr. No. (x) herein above] and also a newly constructed bungalow at Mandar, Near Kaniya Shala, Tehsil Reodar, District Sirohi, Rajasthan – 307 513 [as mentioned at Sr. No.(xi hereinabove)], pending hearing and final disposal of the present Suit and as a pro tem arrangement, only with the intent and purpose to use and stay, it is mutually agreed by and between the parties that Defendant No. 2 and his family shall be handed over the keys of the New Bungalow at Mandar, Near Kaniya Shala, Tehsil Reodar, District Sirohi, Rajasthan – 307 513 and the Defendant No. 1 and his family shall retain the keys of the Old house at Mandar, Near Kaniya Shala, Tehsil Reodar, District Sirohi, Rajasthan – 307 513. It is clarified that this arrangement is to ensure that parties can peacefully co-exist. This arrangement does not confer any right, title or interest in respect of the new bungalow in favour of the Defendant No. 2 and his family and similarly does not confer any right title or interest in favour of the Defendant No. 1 and his family in respect of the old house.

3 The matter shall be listed on board for directions after 12

weeks on which day this Court shall assess whether the disputes between the parties can be settled. If the parties are unable to arrive at any settlement, the parties agree that, the disputes forming part of the present suit shall stand referred to mediation. Further orders with respect to the commencement of mediation shall be considered at the next hearing.

4 In substitution of the order dated 11th April, 2022, the Plaintiff, Defendant No.1 and Defendant No. 2 are restrained by this Hon'ble Court from dealing with, parting with possession, encumbering and/or alienating any of the assets of the estate of the deceased parents, whether disclosed before this Hon'ble Court or not in any manner whatsoever till further orders without express permission of this Hon'ble Court. It is clarified that if Defendant No.2 wants to complete the construction of the newly constructed bungalow at Mandar, Near Kaniya Shala, Tehsil Reodar, District Sirohi, Rajasthan – 307 513, the same will not be in violation of this order.

5 It is clarified that the present order has been passed only to preserve all the assets of the deceased parents which form the subject matter of the dispute between the parties and this court has in no manner opined on or determined the rights of the parties qua the estate of their deceased parents. It is further clarified that, possession in

respect of any immovable property is not being disturbed by the present order, save and except the newly constructed bungalow at Mandar, Near Kaniya Shala, Tehsil Reodar, District Sirohi, Rajasthan – 307 513.

6 The parties are directed to co-operate with each other and the Court Receiver to give effect to the terms of this order in letter and spirit.

7 Liberty to apply.

8 List the matter for directions and further orders on 21st September, 2022.

9 This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)