

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**INTERIM APPLICATION (L) NO. 35904 OF 2024
IN
TESTAMENTARY SUIT NO. 105 OF 1998**

Vaibhav Dayabhai Patel

... Applicant/Orig.Plaintiff

V/s.

Wavell Joseph Pereira and Ors.

... Respondents

Ms. Lalita Rajguru a/w. Ms. Darshana More for the Applicant/Orig. Plaintiff
Mr. Yash Arora (through V.C.) for Respondent No.1 – Society
Mr. Chaitanya Nikte a/w. Swapnil Sangle i/b. Austin Fernandes for
Respondent No.3

CORAM : FARHAN P. DUBASH, J.

DATE : 13th FEBRUARY 2026

P.C. :

1. Pursuant to the order dated 2nd February 2026, Mr. Ramesh Shah is present in Court today. He hands over the original key of Flat No.305 in Court to the Associate of this Court who shall forthwith deposit the same with the Prothonotary and Senior Master of this Court.

2. Mr. Nikte, learned Counsel who appears on behalf of Respondent No.3 submits that by an order dated 1st October 2010, Testamentary Suit

No.105 of 1998 that was preferred by the Applicant stood dismissed since 2010 till the said order was formally set aside and the Testamentary Suit was formally restored by an order dated 31st October 2023 passed by this Court in Notice of Motion No. 62 of 2011 and, as a result, in 2019, his client handed over possession of Flat No.305 to the Society and not to the Applicant. Moreover, it is pointed out that in the Permanent Alternate Accommodation Agreement (**PAAA**) dated 16th May 2012, it has been expressly provided that the benefits thereunder would be subject to the outcome of the Testamentary Suit. He therefore submits that his client has not disobeyed or violated any directions given by this Court and ought not to be penalized for the same.

3. Be that as it may, since the **PAAA** dated 16th May 2012, has been executed by and between Respondent No.2, Respondent No.1 – Society and the Applicant herein and pursuant to which, it was the Applicant who had surrendered possession of the old tenement that was in his possession to the erstwhile Developer, Respondent No.2 herein for demolition and re-development as more particularly recorded in order dated 11th May 2012 passed by this Court in Notice of Motion No. 62 of 2011 in Testamentary Suit No. 105 of 1998, this Court is of the view that the Applicant is required to be put in possession of the said Flat No.305 at this stage. However, this would be subject to the outcome of the Testamentary Suit No. 105 of 1998 since the

Applicant is not a family member of the Deceased Mr. Leo Victor Pereira, viz. the original member of Respondent No.1 - Society in whose name the tenement stands, but instead is stated to be the son of his caretaker who claims his entitlement to the said Flat only pursuant to a bequest made by the Deceased in his Last Will and Testament dated 28th March 1995, of which, probate has been sought in Testamentary Suit No. 105 of 1998.

4. Considering this, this Court is of the opinion that before the Applicant is put in possession of the newly constructed Flat No. 305, he shall give an unconditional Undertaking to the effect that his possession will be subject to the outcome of the Testamentary Suit No. 105 of 1998. To make it clear, the said Undertaking will also expressly state that if for any reason the Applicant is unsuccessful in obtaining probate of the last Will and Testament dated 28th March 1995 of the Deceased Mr. Leo Victor Pereira, he will forthwith vacate, surrender and handover possession of the said Flat No.305 to the Prothonotary and Senior Master of this Court. This Undertaking shall be given by the Applicant, on or before 23rd February 2026. Subject to this Undertaking, the Prothonotary and Senior Master of this Court shall hand over the original key of Flat No. 305 to the Applicant.

5. Ms. Rajguru, learned Counsel who appears on behalf of the Applicant, on instructions from her client who is present in Court today, states that the Applicant agrees and undertakes not to create any third party rights, mortgage, or encumbrance of any nature in Flat No.305 and only the Applicant and/or his immediate family members shall reside in the said Flat No. 305. The said Undertaking is accepted. She makes a further statement and undertaking that the Applicant shall, from the date of being put in possession, pay all the fees, charges, maintenance, etc. in respect of the said Flat No.305 to Respondent No.1 - Society without claiming any equities in that regard. That Undertaking is also accepted.

6. Stand over to 17th March 2026 for further consideration.

(FARHAN P. DUBASH, J.)

Jyoti Pawar

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PRAKASH
PAWAR

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by JYOTI
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Date: 2026.02.14
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