IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3716 OF 2022
IN
SUIT NO.265 OF 2022

Aruna Rathi	…	Applicant
In the matter between:		
Aruna Rathi	…	Plaintiff
Vs.		
Sanjeev Sat Prakash Goyal and others	…	Respondents

WITH
INTERIM APPLICATION NO.2358 OF 2023
WITH
INTERIM APPLICATION NO.2368 OF 2023
IN
SUIT NO.265 OF 2022

Mr. Rahul Moghe a/w. Ms. Sweta Moghe, Mr. Dhruva Gandhi, Mr. Vrushabh Savla i/b. Ms. Sweta Mehta and Mr. Girdharlal for Applicant / Plaintiff.

Mr. Saif Dingaonkar a/w. Ms. Diksha Tripathi i/b. Mr. Amit Karkhanis for Defendant Nos.1, 5 and 8.

Mr. Mayur Khandeparkar a/w. Ms. Aneesa Cheema, Mr. Z. Jariwala and Mr.S. Jariwala for Defendant Nos.2, 6, 7 and 9.

CORAM : MANISH PITALE, J.
DATE : MARCH 28, 2024

P.C. :

. The Applicant/Plaintiff has filed this suit for administration of estate of her deceased father, as also for declaring that she has 1/5th share in his estate, apart from seeking injunctions against the defendants, including her own siblings from inter-meddling with the estate of the deceased. Defendant Nos.1 and 2 are the brothers of the Applicant. Defendant Nos.3 and 4 are her sisters. Defendant No.5 is the wife of defendant No.1 and defendant No.8 is their son. Defendant No.6 is the wife of defendant No.2 and defendant Nos.7 and 9 are their sons. Defendant Nos.10 and 11 are companies in which the deceased held shares.

2. It is the case of the applicant that after her father died intestate, defendant Nos.1 and 2 acted in a manner so as to deplete the estate of the deceased, in order to deprive their sisters i.e. the applicant and defendant Nos.3 and 4 of their rightful shares in the estate of the deceased. In the instant application, the applicant claims that unless appropriate interim orders are passed, there is every likelihood that the interest of the applicant would be adversely affected. Amongst other prayers, the applicant has prayed for appointment of Court Receiver of this Court as the Receiver in respect of the estate of the deceased father, as described in Exhibit-D to the plaint. It is further prayed that the Court Receiver may also be appointed on properties and assets that will be disclosed by defendant Nos.1, 2 and 5 to 9.

3. Defendant Nos.1, 5 and 8 filed their reply affidavit in the present application opposing the prayers. They have relied upon certain documents to claim that the applicant was all along aware about the steps taken by the deceased father as regards the movable and immovable properties left behind by him. It was claimed that the applicant herself has benefited in the process and she cannot turn around and claim that her siblings have duped her. The defendant Nos.2, 6, 7 and 9 supported the stand taken by defendant Nos.1, 5 and 8.

4. The applicant filed rejoinder affidavit refuting the allegations levelled against her and she reiterated the contentions raised in the plaint as well as the present application to insist upon interim reliefs being granted as per the prayers made in the application. The learned counsel for the parties were heard in the backdrop of the material placed on record.

5. Mr. Rahul Moghe, learned counsel appearing for the applicant / plaintiff submitted that the pleadings, affidavits and documents on record sufficiently demonstrated the manner in which defendant Nos.1, 2 and 5 to

9 had acted, so as to deprive the applicant and defendant Nos.3 and 4 of their rightful claims in the estate of the deceased father. It was submitted that defendant Nos.1 and 2, despite being brothers of the Applicant and defendant Nos.3 and 4 had proceeded to take steps that adversely affected the interest of their sisters. According to the applicant, defendant Nos.1 and 2 were aware about the intention of the deceased father to fairly distribute his estate, but since he died intestate, they had taken advantage of the situation, particularly when defendant Nos.3 and 4 had not taken any proactive steps to prevent them from acting in such a manner. The learned counsel for the applicant referred to Exhibit-D filed along with the plaint and in respect of each of the properties, he submitted that the applicant was entitled to 1/5th share. It was submitted that the applicant was clearly entitled to 1/5th share in the defendant Nos.10 and 11 companies, as also appropriate share in the partnership firms in which the deceased was a partner.

6. It was submitted that when the applicant confronted defendant Nos.1 and 2 as regards their alleged unfair and illegal acts, they tried to rely upon family arrangements, which were sham and bogus. It was during this process that the applicant became aware of alleged gift deeds executed by the deceased father whereby he had gifted shares in the companies in favour of defendant Nos.5, 6 and 7. It was alleged that the applicant was not aware about such gift deeds. The applicant claims that she became aware about the same when steps were taken for transfer of shares of the deceased father in the said companies. The learned counsel for the applicant invited attention of this court to certain forms for dematerialization of the shares and their subsequent transfer and it was emphasized that such forms were claimed to have been signed after the date of the death of the father i.e. 03.03.2020. It was brought to the notice of this Court that criminal proceedings had to be initiated by the applicant in respect of such fraud and forgery committed by defendant Nos.1 and 2, which resulted in investigation by the police and a report to the effect that

such signatures appeared to have been put after the death of the father. It was submitted that the criminal proceedings were eventually not pursued by the police on the ground of territorial jurisdiction, but the challenge raised by the applicant there against is pending before this Court.

7. It was submitted that the contesting defendants clearly conceded in their affidavit in reply that the companies, as on today, have no business activities while very valuable assets belong to the said companies. On this basis, it was alleged that unless appropriate interim reliefs are granted by this Court, including appointment of Court Receiver on the properties specified in Exhibit-D, the estate of the deceased would be depleted, thereby causing irreparable loss to the applicant who is entitled to 1/5th share in the estate. It is further alleged that after the applicant claimed her share, initially the contesting defendants were evasive and thereafter, they got some documents signed from the applicant, giving her an impression that all the children of the deceased would get their justified claims. But, the subsequent actions of the contesting defendants indicate that they have no intention to ensure fair distribution of the estate of the deceased amongst all his five children. On this basis, it was submitted that the present application ought to be allowed.

8. Mr. Mayur Khandeparkar, learned counsel appearing for defendant Nos.2, 6, 7 and 9, as also Mr. Saif Dingaonkar, learned counsel appearing for defendant Nos.1, 5 and 8, refuted the allegations made against the said defendants. They submitted that the applicant was all along aware about the manner in which the deceased father had already transferred certain portion of his estate in favour of defendant Nos.1 and 2, as also the other contesting defendants. They emphasized that a gift deed was executed in favour of the applicant also, whereby shares of the deceased father in the defendant No.10 company were gifted to the applicant. This was deliberately suppressed in the plaint as well as in the application and for this act of suppression alone the present application deserved to be

dismissed. Since the applicant was insisting upon interim orders being passed, including appointment of Court Receiver in respect of properties belonging to the estate of the deceased specified at Exhibit-D in the plaint, the learned counsel for the said defendants made their submissions in respect of each property.

9. It was submitted that insofar as the personal properties of the deceased father were concerned, specifically stated at Serial Nos.1 to 7 at page 67 in Exhibit-D, the said defendants did not dispute the claim of the applicant that all the five children of the deceased have $1/5^{th}$ share therein. It was submitted that the immovable property at Serial No.8 belonged to M/s. Canon Steel Private Ltd and that the deceased father did not have any shares in the said entity. Therefore, the applicant cannot claim any reliefs in respect of the same. As regards properties described at page 68 of Exhibit-D, in respect of Serial No. 9, it was submitted that the said property already stood transferred in favour of defendant No.1, as per an order dated 14.06.1995 passed by the Competent Court at Ludhiana. On this basis, it was submitted that the applicant could not claim any reliefs in respect thereof. As regards properties at Serial Nos.10 and 11, the said defendants did not dispute the claim of the applicant about all five siblings having $1/5^{th}$ share each in the said properties. As regards property at Serial No.12 pertaining to 750 shares in M/s. Canon industries Private Ltd (erroneously stated in the said Exhibit as 75 shares), it was claimed that the said shares stood already transferred in the name of defendant No.2 in the year 1995 and hence, the applicant could not raise any claim in respect thereof.

10. In respect of the two partnership firms, it was submitted that the applicant was aware about the litigations pertaining to the two firms. As regards M/s. Sanjeev Woollen Mills, it was submitted that the an order was passed by the District Judge on 28.01.2019 declaring the deed of partnership as non-est and that an arbitration proceeding was already pending at the behest of the applicant in respect of the deed dated

04.03.2020. As regards M/s. Monika India, it was submitted that the deceased father held 99% shares therein and that disputes had arisen between him and the erstwhile partner Hiralal Goyal. It is indicated that an award in respect of the said dispute was passed on 09.07.2013 in favour of Hiralal Goyal and the challenge arising therefrom is pending in the Competent Court at Ludhiana. On this basis, it was submitted that no case was made out by the applicant in respect of the said two partnership firms.

11. As regards the two companies i.e. defendant Nos.10 and 11, as also the properties belonging to the said companies, it was submitted that the 6317 shares of the deceased father in defendant No.10 company were already gifted in favour of the applicant herself and the balance equity shares could be partitioned between the siblings. But, if the applicant was ready to bring the shares gifted to her to be made subject matter of the present suit, the said defendants would have no objection. As regards defendant No.11 company, it was submitted that the deceased father had already executed gift deeds, whereby his shares were gifted to defendant Nos.5, 6 and 7 and the applicant being aware of such gift deeds, there was no question of she claiming any rights therein. It was further submitted that the applicant could not raise any contentions in respect of the transfer of shares, because she herself has filed Company Petition No.277 of 2022, before the National Company Law Tribunal, Mumbai (NCLT) claiming multiple reliefs, including a direction for reversal of transfer of shares of the deceased father. It was submitted that this fact has been suppressed by the applicant from this Court and therefore, on this ground alone, the application ought to be dismissed.

12. Attention of this Court was invited to the contents of the rejoinder affidavit wherein the applicant merely claimed that she did not mention about the gift executed in her favour in respect of shares pertaining to defendant No.10 company due to an inadvertent error, thereby clearly demonstrating the fallacious stand taken by the applicant. It was submitted

that there was no question of seeking any interim reliefs in respect of properties pertaining to defendant Nos.10 and 11 companies as the applicant had indulged in suppressions and in any case, she has failed to satisfy the mandatory parameters for granting interim reliefs. On this basis it was submitted that this Court may appoint Court Receiver concerning the properties of the deceased father in respect of which the said defendants had conceded about all the five siblings having 1/5th share each, further appointing the applicant as the agent of the same, with liberty to the said defendants to apply to this Court for the conditions on which she should be appointed as the agent of the Receiver.

13. The learned counsel for the applicant tried to explain as to why the gift deed executed in her favour was not mentioned in the plaint as well as in the application. The learned counsel could not explain as to why filing of proceedings before the NCLT was suppressed, but it was sought to be urged that the NCLT would not have jurisdiction to decide the issues being raised by the applicant in the present proceedings. Reliance was placed on judgements of this Court in the case of *Prabodh Jamnadas Kothari Vs. Vikram Jamnadas Kothari*, **2012 SCC OnLine Bombay 1628** and *Dhirubhai Vs. Lataben* (order dated **24.10.2016** passed in **Notice of Motion No.1857 of 2016** in **Suit No. 624 of 2016**). On this basis, in rejoinder, the learned counsel for the applicant reiterated the submissions made in support of the application.

14. Having heard the learned counsel for the rival parties, at the outset, this Court would like to deal with the allegations of suppression made against the applicant. A perusal of the plaint as well as the application shows that the applicant has specifically stated that she was not at all aware about gift deeds dated 19.02.2020 executed by the deceased father whereby shares in the defendant No.11 company were gifted to defendant Nos.5, 6 and 7. She also did not state anything about gift deed dated 25.02.2020 executed by the deceased father in her favour in respect of shares in

defendant No.10 company. When these facts were specifically placed before this court in the affidavit in reply of defendant Nos.1, 5 and 8, in the rejoinder affidavit the applicant merely stated that although she agreed that the deceased father had gifted 6317 shares of defendant No.10 company to her by the said gift deed, the said fact was not mentioned in the plaint only due to "an inadvertent error". The said statement in the rejoinder affidavit comes through as a weak and tenuous explanation. It also indicates that the applicant did not state all the facts within her knowledge in the plaint and this gives an impression that the applicant avoided to mention inconvenient facts. While considering an application for grant of interim reliefs, this becomes a relevant factor.

15. Similarly, during the course of arguments when the learned counsel appearing for the contesting defendants apprised this Court about the fact that the applicant had already filed Company Petition No. 277 of 2022 before the NCLT, *inter alia*, praying for reversal of transfer of shares in favour of the contesting defendants, initially the learned counsel appearing for the applicant submitted that he was not aware, but when the applicant who was present in Court personally instructed him, he conceded that such a proceeding was indeed filed before the NCLT. In fact, a copy of the said company petition was tendered by the learned counsel appearing for the contesting defendants and the filing and pendency of the said petition could not be denied by the applicant. A perusal of the said petition shows that it was verified in November 2022 and filed before the NCLT. The rejoinder affidavit on behalf of the applicant was sworn on 01.08.2023 and yet, she chose not to divulge filing of the said petition before the NCLT. This is an act of suppression and on this ground alone this Court could have dismissed the present application. Yet, this Court has considered the rival contentions and the prayers made in the present application have been deliberated upon. Nonetheless, this Court has gathered an impression that due to the acrimonious disputes between the applicant and her siblings, she has chosen not to place all the relevant facts before this Court in the plaint

as well as the application and affidavits filed in the present proceedings.

16. The stand taken on behalf of the contesting defendants as noted hereinabove indicates that in respect of certain properties belonging to the estate of the deceased father, the contesting defendants themselves have conceded that all the five siblings would have 1/5th share each and that therefore, Court Receiver can be appointed. The dispute and in that context the prayer for interim reliefs made on behalf of the applicant stands limited to movable and immovable properties, other than those in respect of which the contesting defendants have already conceded.

17. The applicant has not been able to dispute the fact that in respect of the partnership firms i.e. M/s. Sanjeev Woolen Mills and M/s. Monika India, disputes are pending either before a competent court and / or in proceedings arising out of arbitration proceedings. Although the applicant alleges that such disputes can be said to be irrelevant to the present proceedings or that they have been raked up by the contesting defendants only to deprive the applicant of appropriate reliefs in the present proceedings, this Court finds that existence of such proceedings cannot be denied by the applicant. In such a situation, no interim reliefs can be granted in respect of the two partnership firms wherein the deceased had an interest as a partner.

18. As regards immovable property at Serial No.8 on page 67 in Exhibit-D, the contesting defendants claim that it belongs to a company M/s. Canon Steel Private Ltd. in which the deceased father did not have any shares. This is disputed by the applicant. But, at this stage the applicant has not been able to place on record cogent and sufficient material to demonstrate that the said property could also become subject matter of interim orders and therefore, this Court is not inclined to entertain her prayers in respect of the said property. The applicant has also not been able to dispute the claim of the contesting defendants that the immovable property at Serial No.9 at page 68 in Exhibit-D was subject matter of an

order dated 14.06.1995 passed by the Competent Court at Ludhiana, on the basis of which the defendant No.1 claims that the said property was transferred in his favour. It is simply claimed that it was a collusive decree. But, the fact that such an order / decree exists was not disputed by the applicant. In the face of such material, it would not be safe to pass any interim orders in respect of the said property pending the suit and the applicant has not been able to make out a *prima facie* case is in that regard.

19. As regards immovable property in the form of shares at Serial Nos.10 and 11 at page 68 in Exhibit-D, the contesting defendants have themselves conceded that all the five siblings would have $1/5^{th}$ share each in the said properties, thereby indicating that appropriate interim orders can be passed. As regards 750 shares in M/s. Canon Industries Ltd stated at Serial No.12, the defendant No.2 claims that the aforesaid shares were already transferred in his name in the year 1995. The applicant disputes the same but, the resolution of such dispute would require further material to be placed on record and hence, it cannot be said that the applicant has been able to make out a strong *prima facie* case for granting interim reliefs in respect of the said immovable property also.

20. It appears that the applicant is concerned about claims of defendant Nos.5, 6 and 7 in respect of shares in defendant No.11 company alleged to have been transferred in their favour pursuant to gift deeds executed by the deceased. As noted herein above, the applicant chose not to apprise this Court that she herself has already filed Company Petition No. 277 of 2022 before the NCLT, *inter alia*, for reversal of transfer of shares of defendant No.11 company in favour of defendant Nos.5, 6 and 7. The applicant is pursuing the said petition before the NCLT. The allegations she had made about alleged fabrication and forgery in the forms leading to transfer of the shares of the defendant No.11 company, have also been raised in the said petition filed before the NCLT. In such circumstances, it would not be appropriate to pass any interim orders in favour of the applicant.

21. In this context the learned counsel for the applicant relied upon the aforesaid two judgements in the cases of **Prabodh Jamnadas Kothari Vs. Vikram Jamnadas Kothari** (*supra*) and **Dhirubhai Vs. Lataben** (*supra*). These judgements pertain to the extent of jurisdiction of the NCLT. This Court is of the opinion that the aforesaid contentions of the applicant may give rise to a question of jurisdiction in the context of Section 430 of the Companies Act 2013, whereby the jurisdiction of the civil court is barred in respect of the matters wherein the NCLT or the appellate tribunal has jurisdiction. This indicates that it would not be appropriate to pass any interim orders in respect of such a dispute, considering the fact that the shares have been already transferred in respect of defendant No.11 company in favour of defendant Nos.5, 6 and 7. These transfers were based on gift deeds dated 19.02.2020. The applicant took a stand in the plaint that she was not aware about execution of the said gift deeds by the deceased father. But, she suppressed the fact that about six days later, on 25.02.2020, the deceased father also executed the gift deed in favour of the applicant transferring 6317 shares of defendant No.10 company in her favour. The *WhatsApp* exchanges between the parties prior to filing of the suit also give a *prima facie* impression that the applicant was aware about the two gift deeds executed in favour of defendant Nos.5, 6 and 7 in respect of shares of defendant No.11 company.

22. Considering the aforesaid material and the manner in which the applicant has chosen to be economical in stating facts pertaining to the transfer of shares in respect of defendant Nos.10 and 11 companies, this Court is not inclined to consider the prayers for interim reliefs as regards the said companies. It is an admitted position that the companies at present are doing no business and merely because the companies own immovable properties, that cannot be a basis for the applicant to press for interim reliefs.

23. In view of the above, the application of the applicant is partly

allowed by appointing Court Receiver of this Court as Receiver in respect of properties stated at Serial Nos.1 to 7 and 10 and 11 at pages 67 and 68 in Exhibit-D. The applicant is appointed as agent of the Court Receiver and she shall continue in possession of the said properties in that status. The contesting defendants are granted liberty to apply to this court as regards the conditions of appointment of the applicant as the agent of the Court Receiver. The applicant can respond to the same and after hearing the parties, this Court will specify the conditions.

24. All other interim reliefs claimed by the applicant are rejected and Interim Application No.3716 of 2022 is disposed of.

25. As regards Interim Application Nos.2358 of 2023 and 2368 of 2023, the same are not concerned with the application for interim reliefs decided by the present order. Accordingly, the said applications will be taken up for consideration in due course.

(MANISH PITALE, J.)

Minal Parab