

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION (L) NO. 19345 OF 2025
IN
TESTAMENTARY SUIT NO. 8 OF 2018
WITH
INTERIM APPLICATION (L) NO. 16215 OF 2026
IN
MISCELLANEOUS PETITION (L) NO. 19345 OF 2025

Serika Lal]
 Age : around 58 years; Occ: Self-employed]
 Hindu, Indian inhabitant, residing at 308,]
 Shalaka, 9, Maharshi Karve Road, Cooperage,]
 Mumbai 400 021] **...Petitioner**

Versus

Devika Sunil Jamdar]
 Aged 59 years, Occupation : Doctor, of Mumbai,]
 Hindu Indian inhabitant, residing at 203,]
 Godavari, Sir Pochkhanwala Road, Worli, Mumbai]
 - 400 030] **...Respondent**

Mr. Gauraj Shah a/w Mr. Rishabh Jadhav, Ms. Riya Patil i/b Parinam Law Associates, for the Petitioner.

Mr. Ankit Lohia a/w Mr. Varun Nathani, Mr. Indrajeet Kulkarni, for the Respondent.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : May 5, 2026
PRONOUNCED ON : June 8, 2026

ORDER:

1. The Miscellaneous Petition has been preferred seeking removal of the Respondent as Administrator of the estate of the deceased and to modify the order dated 8th April, 2021 passed in Testamentary Suit No. 8 of 2018 to appoint any other fit person as Administrator for the estate of the deceased.

2. The dispute concerns the property of Late Raghunandan Lal Aggarwal who has left behind him surviving as his legal heirs, the Petitioner, the Respondent and two other daughters. The Respondent filed Testamentary Petition No. 2244 of 2017 *inter alia* for grant of Letters of Administration in respect of estate of late Raghunandan Lal Aggarwal in which the Petitioner herein had filed Caveat bearing No. 13 of 2018 opposing the grant. The Testamentary Petition came to be converted in Testamentary Suit No. 8 of 2018. The Schedule of assets to the Testamentary Petition sets out the immovable property being Flat No. 308, Shalaka Co-operative Housing Society Limited, Colaba, Cooperage, Mumbai and movables being credit in saving bank account, equity shares in Demat Account and loan given to one M/s Rare Enterprises. The total value of the estate was given as Rs 43,69,00,689.97/-.

3. During the pendency of Testamentary Suit No. 8 of 2018, the Petitioner and the Respondent entered into Consent Terms dated 6th April, 2021. The Consent Terms provided for withdrawal of caveat for grant of Letters of Administration to the Respondent. As per Clause D of the Consent Terms, the Respondent agreed to distribute the assets stated in the Consent Terms within period of 10 weeks after obtaining Letters of Administration. The Consent Terms were made order of this Court vide order dated 8th April, 2021.

4. Pursuant to the Consent Order, the Letters of Administration came to be issued in favour of the Respondent. Vide order dated 13th July, 2021, passed by this Court, the time to distribute the assets was extended to 31st October, 2021.

5. Alleging non disclosure of mode of liquidation of the assets/shares and non distribution of sum of Rs. 6 crores set aside as corpus to meet certain statutory liabilities, the present application is filed seeking removal of the Respondent as administrator. It is contended that Respondent was not appointed as administrator with respect to immovable property at serial no. 1 and movable property at serial no. 3 of schedule 1 of the captioned Testamentary Petition and was only appointed as administrator in respect of the movable properties which were the amounts lying to the credit of the deceased in Standard Chartered Bank and the equity shares in Demat account with Indbank Merchant Banking Services Limited.

6. The Respondent has opposed the Petition by filing reply affidavits dated 14th October, 2025, 18th February, 2026 and 6th March, 2026. The sum and substance of the Respondent's case is that the Respondent is appointed as administrator of the estate of deceased and two properties remain sub-judice in Suit No. 1427 of 2019. There is compliance with the Court directions and the appropriate assets are liquidated and net proceeds distributed equally amongst all

beneficiaries. Two of the properties forming part of Schedule to the Testamentary Petition remain sub judice in Suit No. 1427 of 2019 and their preservation pending adjudication is a continuing fiduciary duty. The immovable property being Flat No. 308 is in occupation of Petitioner and is subject matter of Suit No. 1427 of 2019 filed by the Respondent against the Petitioner herein. The Statement of Accounts have been duly filed in the Court. The plea of *res judicata* is raised as identical relief were sought in Interim Application No 25222 of 2021, which was withdrawn by the Petitioner to avoid contempt proceedings. In so far as amounts realised from liquidation of portfolio is concerned, affidavit of 14th October, 2025 states that distribution is complete and portion of corpus was utilised to clear estate taxes and expenses for distribution of assets. Estimated tax liabilities for sub-judice properties have been computed and reserved.

7. During the hearing of the Miscellaneous Petition, in view of the allegations about the estate not being distributed as per the Consent Terms, by order of this Court dated 17th December, 2025, the Respondent was directed to produce the statement of accounts setting out the details of amounts received on liquidation of assets, expenses incurred, taxes paid and balance in hands of the administrator. Subsequently, during the hearing on 9th March, 2026, at the request of learned counsel for the Respondent, a Chartered Accountant was

appointed as Court Commissioner for examining the statement of accounts so that appropriate report can be placed before this Court for consideration. Accordingly, Advocate Rahul Sarada was appointed as Court Commissioner. Pursuant to the order passed by this Court, the report dated 30th April, 2026 and the supplementary report dated 4th May, 2026 was submitted by the Court Commissioner.

SUBMISSIONS :-

8. Mr. Shah, learned counsel for the Petitioner would submit that as per the Consent Terms dated 6th April, 2021, the Petitioner had withdrawn the Caveat and given consent to the grant of Letters of Administration and the Respondent was appointed as administrator in respect of undisputed assets which excluded the properties set out in clause 2 which is flat no. 308 at Shalaka Co-operative Housing Society Limited and sum of Rs. 3.5 crores deposited by one Mr. Rajesh Jhunjunwala in this Court. He submits that there is dispute in respect of flat no. 308 which is the subject matter of Suit No. 1427 of 2019 which is in occupation of Petitioner. He submits that as per the Consent Terms, the Respondent was to distribute the assets amongst the beneficiaries within 10 weeks after obtaining the Letters of Administration by this Court. He points out the email dated 29th October, 2021 addressed by the Respondent to the beneficiaries informing them that sum of Rs 10 Crores is being set aside for liabilities.

He submits that the proceeds from sale of Swiss shares was not subject matter of consent terms and the Respondent set aside corpus for meeting tax liabilities even in respect of the sale proceeds of Swiss shares. He submits that the email specifically states that the administrator has liquidated the entire portfolio of equity shares and has added substantial gains of several crores to the final wealth from the beginning of the period till the end of distribution period on 31st October, 2021.

9. He submits that thereafter by email dated 4th January, 2022, a sum of Rs. 1 crore was again released by the Respondent from the set aside corpus. He submits that therefore, out of the sum of Rs. 10 crores, a sum of Rs. 6 crores is lying with the administrator for which no accounts have been given. He submits that in the Interim Application(L) No. 2522 of 2021 filed by the Petitioner in Testamentary Suit, it was pointed out that the deceased along with Vinita Sanghi had a joint account in State Bank of India which was not disclosed in the Petition, and therefore, the relief sought in the previous application was to pass an order directing the Plaintiff to disclose all information in respect of the joint account and in that context, the relief was sought of modification of the order dated 8th April, 2021 and substitution of the Respondent as administrator.

10. Mr. Shah would point out the Court Commissioner's Report

showing net proceeds of Rs. 39,94,54,985.82 from sale of shares after deducting broker's charges. He further points out the break up of expenses provided by the Respondent to the Court Commissioner which includes legal costs for Suit No. 1427 of 2019, administrator's fees, work space charges etc. He submits that the Respondent had utilised the corpus set aside for payment of statutory taxes towards legal and other expenses incurred by the Respondent in prosecuting the Suit, which expenses are also highly inflated.

11. He submits that the Respondent having being appointed as administrator only in respect of the movables was mandated to liquidate the shares and distribute the proceeds and the appropriation from the sale proceeds towards the litigation of Suit No. 1427 of 2019 constitutes misconduct. He submits that under Section 307 of Succession Act, the administrator has the power to dispose of the property of the deceased vested in him under Section 211 in such manner as he thinks fit and Section 211 provides that the administrator or the deceased person is his legal representative for all purposes. He submits that where the administrator misapplies the estate of the deceased, the administrator is liable to make good the loss or damage so caused, and therefore, the administrator is liable to bring back the amounts. He submits that insofar as the bringing back the amounts is concerned, separate application can be filed. He submits that he has no

objection if the Respondent continues with the pending Suit No. 1427 of 2019.

12. Mr. Lohia, learned counsel for the Respondent would submit that under the Consent Terms dated 6th April, 2021, the Respondent was appointed as administrator of the estate and in the course of administration, the Respondent has distributed a sum of Rs. 36 crores to the legal heirs. He submits that the Respondent is also taking steps to protect the estate of the deceased and the Petitioner is occupying major immovable property and is claiming right over the flat contrary to the estate, for which the Respondent has instituted Suit No. 1427 of 2019 for administration and partition of the estate.

13. He submits that vide order dated 11th November, 2019, passed in pending suit, ad interim order was passed restraining the Petitioner herein from dealing with the estate. He submits that subsequently, as it was found that a third party was residing in the estate as paying guest on 29th January, 2020, Court Receiver came to be appointed by this Court who took formal symbolic possession. He submits that by the said order, this Court observed that the estate flat is liable to be protected and that the society outgoings were in arrears and also noted the statement on behalf of the learned counsel for the Petitioner that she was willing to clear undisputed property tax, arrears and all future society bills.

14. He submits that one of the beneficiary, Kavita Mehta, has filed a written statement in the Suit unconditionally supporting the Respondent. He submits that the Petitioner's case in the Suit is that the deceased had given the estate flat to her during his lifetime, and therefore, she is the owner. He submits that by order dated 30th September, 2022, this Court after examining the record noted that there is no material to suggest that the title in the estate flat has been transferred by the deceased to the Petitioner and points out to the order dated 30th September, 2022. He submits that as royalty was not paid, the Petitioner was directed to vacate and hand over vacant and peaceful possession of the estate flat to the Court Receiver on or before 30th November, 2022, and thereafter, two other legal heirs i.e. Kavita Mehta and Vinita Sanghi have addressed emails confirming that the estate flat belongs to the deceased and that each of the four daughters is entitled to 1/4th share therein.

15. He submits that by order dated 20th December, 2022, this Court recorded an arrangement between the Petitioner and the Respondent whereby certain amounts were to be deposited by the Petitioner as royalty towards occupation of the estate flat, payment of outgoings. He submits that the order also records that the Respondent's earlier application in the Testamentary Suit seeking substitution of the Plaintiff as administrator was withdrawn. He submits that issues are framed in

the said Suit No. 1427 of 2019 and the stage of the suit is that the cross-examination of the parties is completed. He submits that in the said suit there were more than 24 applications/appeals filed which are being defended by the Respondent to protect the estate.

16. Mr. Lohia would submit that under Section 321 of the Indian Succession Act, 1925 the expenses of obtaining Letters of Administration including the costs incurred for administering the estate are required to be paid. He submits that as per the Consent Terms, the Respondent was appointed as administrator of the estate of the deceased, and only in respect of those two properties mentioned in Clause 2, she was not entitled to deal with the estate. He submits that there were about 82 hearings held in pending suit for which expenses were required to be incurred.

17. He submits that in the earlier application bearing Interim Application (L) No. 25222 of 2021, identical order was sought, and therefore, the present application is barred by *res judicata*. He would further point out the order of the Hon'ble Division Bench dated 20th December, 2022 passed in the connected suit whereby the Contempt Petition came to be withdrawn as the Petitioner withdrew the Letters of Administration. He would further submit that the other beneficiaries have accepted that the property is in occupation of the Petitioner is the estate of the deceased. He would further point out the prayers sought

in the suit that the Respondent is only seeking 1/4th undivided share in the estate. He would submit that the Exhibit B which was the schedule of the estate is the common schedule as the Testamentary Petition. He submits that it was agreed that item no. 2 which was the equity shares would be liquidated. He would further submit that in order of 20th December, 2022, the Hon'ble Division Bench in an Interim Application filed in Suit No. 1427 of 2019 have noted that the Petitioner cannot be permitted to occupy the said flat and that there is nothing on record to remotely suggest that the deceased had given the flat to the Petitioner.

18. He would further submit that as per the Consent Terms, the Respondent is entitled to administer the estate and to incur expenses. He submits that the removal of the administrator cannot be at the behest of the person who holds on to the estate of the deceased and there is no ground for her removal. He would further point out to the Court Commissioner's Report and would submit that the breakup of the expenses incurred by the administrator has been given by the Respondent and has provided the supporting bills/vouchers and that there are no specific discrepancies which was pointed out by the Petitioner. He would further point out the listing details in Suit No. 1427 of 2019, which were about 82 in number and that expenses are mounting due to delay tactics adopted by the Petitioner in the Suit proceedings. He submits that on the contrary, the Petitioner herself has

spent Rs. 1,27,995/- from the bank account of the deceased. He submits that there is no case made out for removal of the Respondent. In support he relies upon the following decisions :-

(i) The Union of India vs The Official Assignee of Bombay¹

(ii) Dr. Devika Sunil Jamdar vs Serika Lal @ Ms. Sarika Aggarwal And Ors.²

(iii) Abha Dastane-Rao And Ors. vs Prabhakar Deolankar And Ors.³

19. I have considered the submissions and perused the record.

20. The present Petition is filed under Section 301 of Succession Act seeking removal of the Respondent as administrator and for appointment of fit person as administrator. Section 301 reads as under:

"301. Removal of executor or administrator and provision for successor.— The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate."

21. One of the issues over which the parties have locked horns is the assets in respect of which the Respondent has been appointed as an administrator. This is for the reason that the Respondent, in the break up of expenses, given to the Court Commissioner have claimed substantial expenses incurred by the Respondent towards prosecuting

1 1970 SCC Online Bom 99

2 Order in Suit No. 1427 of 2019 by Bombay High Court on 21.08.2025

3 2016 SCC Online Bom 110

Suit No. 1427 of 2019 against the Petitioner. The Respondent has been granted Letters of Administration in respect of estate of deceased pursuant to the Consent Terms executed between the parties. It is well settled that the administrator derives all rights in the estate by virtue of grant of letters of administration. Section 308 of Succession Act, speaks of general powers of administration and reads as under:

"308. General powers of administration.-An executor or administrator may, in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him incur expenditure--
 (a) on such acts as may be necessary for the proper care or management of any property belonging to any estate administered by him, and
 (b) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property."

22. The above reproduced section entitles the administrator to incur expenditure on such acts as may be necessary for care or management of any property belonging to the estate *administered* by him. Section 321 of Succession Act, on which reliance is placed by Mr. Lohia reads as under :

321. Expenses to be paid next after such expenses.-The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, shall be paid next after the funeral expenses and death-bed charges.

23. Section 321 permits payment of expenses incurred in respect of any judicial proceedings that may be necessary for administering the estate. The *sine qua non* for appropriating the expenses for judicial proceeding from the estate is the right to administer the estate. That propels us to the Consent Terms filed in the Testamentary Suit.

24. The Consent Terms read as under :

[A] Agreed, Declared And Confirmed by and between the Plaintiff and the Defendant as follows :

1) The Defendant, Serika Lal hereby withdraws the Caveat in the present Suit and gives consent to make the Testamentary Petition No. 2244 of 2017 absolute in terms of prayer clause (a) i.e the Petitioner Devika Sunil Jamdar is appointed as administrator to administer the estate and credits of the deceased Raghunandan Lal Aggarwal alias Raghunandan Lal, as more particularly mentioned in Schedule-1 of the above Petition except the properties set out in clause 2 below..

2) It is clarified that the Petitioner Devika Sunil Jamdar who is appointed as administrator shall not deal with the following two properties :-

(i) Flat No. 308 Shalaka Co-operative Housing Society Limited, Opposite Cooperage Football Ground, Colaba, Maharshi Karve Road, Dr. Ambedkar Statue Chowk Area, Colaba, Cooperage, Mumbai - 400 021.

(ii) The amount of (Rs. 3.5 crores) deposited by one Rajesh Jhunjhunwala, partner of M/s. Rare Enterprises with the office of the Prothonotary & Senior Master, High Court, Bombay;

3) These Consent Terms are being filed without prejudice to the rights and contentions of the parties to the Suit being Suit No. 1427 of 2019 filed by the Plaintiff herein for administration and partition of the estate of the late Raghunandan Lal Aggarwal alias Raghunandan Lal;

[B] It is also agreed, declared and confirmed that both the aforesaid properties mentioned in paragraph (2) shall be dealt with subject to outcome of Suit No. 1427 of 2019 filed by the Plaintiff herein.

[C] The Defendant has no objection on the Plaintiff being appointed as administrator in respect of all other undisputed estate and credits of the said deceased, save and except as provided hereinabove.

[D] Agreed, declared and confirmed that the Plaintiff will distribute the above said assets of the deceased among 4 legal heirs (Kavita Mehta, Vinita Sanghi, Devika Jamdar, Serika Lal) equally within 10 weeks after obtaining the Letters of Administration by this Hon'ble Court.

[E] It is also agreed, declared and confirmed that the legal cost and other expenses to be incurred for distribution of the above assets will be by law.

25. Clause A(1) of the Consent Terms is clear and specific that the Respondent is appointed as Administrator to administer the estate mentioned in Schedule 1 of the Testamentary Petition *except* the properties set out in Clause (2) of the said Consent Terms. The properties which are mentioned in clause (2) of the Consent Terms were

carved out from the grant of Letters of Administration. The properties mentioned in clause (2) are flat being flat no. 308, Shalaka Co-operative Housing Society which is the subject matter of Suit No. 1427 of 2019 filed by the Respondent for administration and partition and loan advanced to third party. Clause B provides that the properties mentioned in paragraph 2 shall be dealt with subject to outcome of Suit No. 1427 of 2019.

26. Suit No. 1427 of 2019 was filed by the Respondent against the Petitioner and other two beneficiaries seeking a declaration that the parties are entitled to 1/4th undivided share in the estate and that the use, occupation and enjoyment of the said suit flat by Defendant No. 1, who is the Petitioner herein to the exclusion of the others is illegal and wrongful, and seeking a relief that the Court be pleased to administer the estate left by the deceased. The suit prayers therefore seek relief of administration of the suit flat by the Court, which prayer would have been amended, if the contention was that Respondent was appointed as administrator of entire estate.

27. There was thus a dispute between Petitioner and Respondent in respect of the subject Flat No 308. Clause C states that the Petitioner herein had no objection to the Respondent being appointed as administrator in respect of all other *undisputed* estate and credits of the said deceased save and except as provided herein above. The use of

the word “undisputed estate” would take the disputed flat out of the estate in respect of which the Respondent was appointed as administrator.

28. Considering that the proceedings were pending between the parties in respect of right of the Petitioner in respect of the suit flat, it defies reason that the Respondent would have been appointed as an administrator even in respect of the flat which was the bone of contentions between the two parties. The flat and the amount of Rs. 3.5 crores deposited by one Mr. Rajesh Jhunjunwala was out of the scope of administration by the Respondent. Clause E of the Consent Terms provides that the legal cost and other expenses to be incurred for distribution of the above assets will be by law. Mr. Lohia would selectively read Clause 2 of the consent terms to contend that the only restriction imposed by the consent terms was not to deal with the suit flat and sum of Rs 3.5 crores. To administer the estate is to deal and manage the estate and if the consent terms precluded the Respondent from dealing with the suit flat, there was nothing left to administer qua the suit flat for which the Respondent could be appointed as administrator.

29. Upon a holistic reading of the Consent Terms, it is evident that the Respondent was appointed as an administrator only in respect of the undisputed estate and that the Respondent was not appointed as

administrator of flat no. 308 and the loan of Rs. 3.5 crores.

30. The Schedule of Assets to the Testamentary Petition apart from the subject flat and sum of Rs 3.5 Crores loan, included amount lying in saving bank account and equity shares in the Demat account. Being appointed as administrator only in respect of the saving bank account credit and equity shares, the Consent Terms imposed an obligation on the Respondent to liquidate the shares and distribute the same amongst the beneficiaries. As an administrator of these specific assets, the Respondent was entitled to expenses incurred in respect of acts done in furtherance of administration of these specific assets.

31. The mandate of the Court Commissioner appointed by the Court was to give a concise statement of the value of the estate, distributions of funds, expenses incurred and balance reserved. The Court Commissioner's Report of 30th April, 2026 states that the statement of accounts furnished by the Respondent was examined and the balance reserve was given as under:

Sr No.	Particulars	Amount (Rs.)	Amount (Rs.)
A.	Value of the Estate liquidated/ realised/ available:		
	i. Amount lying in Standard Chartered Bank Account as on 15.04.2017	66,58,741.40	
	ii. Balance in SBI Account of the Deceased with interest	22,391.00	
	iii. Net proceeds from sale of		

	shares after reducing charges levied by the broker	39,94,54,985.83	
iv.	Accretions to the estate on account of dividend, pension receipts and savings bank account interest between 15.04.2017 till 16.01.2026	2,17,30,198.09	
v.	Interest on Fixed Deposits created with HDFC Bank	70,53,184.40	
	Value of the estate [A=(i)+(ii)+(iii)+(iv)+(v)]		43,49,19,500.72
B.	Distributions from the estate to the four legal heirs		36,00,00,000.00
C.	Expenses incurred till 16.01.2026		5,17,13,613.00
D.	Certain minor diminutions of the estate		1,27,995.00
E.	Balance reserve as on 16.01.2026 [E=A-B-C-D]		2,30,77,892.72

32. By the supplementary report, the accretions at Sr No A(iv) were decreased by deducting the TDS amount of Rs 1,96,236.80. Resultantly, the figure changed from Rs. 2,17,30,198.09/- to Rs. 2,15,33,961.29/- and the balance reserve was Rs 2,28,81,655.92/.

33. The Respondent has claimed expenses incurred by the Administrator at Rs. 5,17,13,613/- and the breakup was given in paragraph 7 as under :

Sr. No.	Particulars	Amount (Rs.)
1.	Income Tax, interest thereon, etc. on capital gains on sale of shares and income of the estate over the	2,51,63,568

	years (actual payments taken from bank statements net of income tax refund actually received)	
2.	Legal costs in respect of Suit No. 1427 of 2019	98,95,176
3.	Administrator's fees	67,23,250
4.	Miscellaneous - notary, printing, clerk, peon, stationery, stenographer, etc.	22,73,579
5.	Workspace & utilities	22,44,000
6.	Legal costs in respect of TP No. 2244 of 2017	19,81,191
7.	Fees of the Chartered Accountant of the estate	15,49,340
8.	Conveyance	10,10,000
9.	Costs for coordinating with authorities/institutions outside India	3,75,510
10.	Financial due diligence and related advisory work	2,13,000
11.	Expenses towards compliances/advisory services in relation to society rules, maintenance disputes etc.	1,55,000
12.	Valuation of flat	75,000
13.	Inspection of flat	54,999
Total		5,17,13,613

34. The Court Commissioner report states that many supporting bills/vouchers were submitted by the Respondent and certain expenses incurred such as conveyance/cab fare etc cannot be supported by vouchers. The report further records the objection of the Petitioner herein that the expenses have been incurred by the Administrator prior to 6th April, 2021 and after 31st October, 2021.

35. The Respondent, as administrator of the specific assets being credit in the saving bank accounts and equity shares in the demat account, was mandated to distribute the assets amongst the beneficiaries. Looking at the nature of the movables, for liquidation of

the demat shares, at the highest, the expenses incurred towards services of Chartered Accountant for the implications of the liquidation or appointment of advisor for the said purpose could be justified. The process of liquidation of shares contained in demat account does not involve long drawn time consuming process particularly in today's era of information technology. The cost of Chartered Accountant is about Rs 15,49,340/ and the Respondent has claimed administrator's fees at Rs 67,23,250/.

36. Apart from statutory taxation on sale of shares amounting to Rs 2,51,63,568/-, substantial expenses have been incurred towards legal costs, notary, printing, stationery etc, workspace and utilities, conveyance, valuation of flat etc, which makes it more than evident that the expenses for prosecuting the Suit No 1427 of 2019 has been recovered from the sale proceeds of the shares of the deceased. In these proceedings, it is not necessary to go into the aspect as to whether the expenses incurred has been substantiated by supporting documents. Perusal of the expenses claimed by Respondents, leave no manner of doubt that the sale proceeds of shares have been utilised to fund the litigation of Suit No 1427 of 2019. Whether the act of appropriating the sale proceeds received from the liquidation of the assets in respect of which the Respondent was appointed as administrator towards litigation in respect of assets not being

administered by the Respondent constitutes mismanagement and misconduct is the question.

37. The Respondent vide email dated 29th October, 2021 informed the beneficiaries that the Respondent has set aside a corpus of Rs 10 Crores as outer limit as per suggestion of chartered accountant for liabilities from India and Switzerland referable to the capital gains tax applicable in India as the funds were proceeds from sale of Swiss shares. The email states that final tranche III of Rs 3 crores will be sent and with this tranche III, the distribution will end and the balance of corpus funds after settling all the liabilities will be distributed after submission of all accounts to the Court. Vide email dated 4th January, 2022, the Respondent states that further release of INR 1 Crores to each heir from the set aside corpus is feasible.

38. Having informed the other beneficiaries that the corpus of Rs. 10 crores was being set aside for the purpose of liabilities to be incurred towards the sale of the shares, the Respondent was conscious that the corpus which was set aside was to be utilized only for that purpose. Subsequently, on 4th January, 2022, a sum of Rs. 1 crore from the set-aside corpus was paid to the other beneficiaries, and even in the said email, it is stated that as per the advice of the estate Chartered Accountant a corpus of Rs. 10 crores was set aside for potential liabilities. In none of the Affidavits filed in present proceedings, there is

a whisper about utilising the corpus retained, towards funding expenses of the pending suit. On the contrary, the Affidavit of 14th October, 2025 states that estimated tax liabilities have been computed and reserved for the sub-judice properties. The Court Commissioner's Report calculates the sum towards meeting tax liabilities at about Rs. 2.5 crores. The emails of 29th October, 2021 and 4th January, 2022 are completely silent as regards utilisation of the sale proceeds towards prosecution of the Suit No 1427 of 2019. The set aside corpus was only for the purpose of payment of taxes and despite thereof, the Respondent has misappropriated the corpus for funding the Suit proceedings.

39. Lengthy arguments were advanced by Mr. Lohia to demonstrate the conduct of the Petitioner in the Suit No. 1427 of 2019 and the listings in the said suit in order to justify the expenses charged by the Respondent to the estate of the deceased with regard to the Suit No. 1427 of 2019. Some of the listings are prior to the appointment of Respondent as administrator. This Court in these proceedings is not concerned with the litigation of Suit No. 1427 of 2021 or the expenses incurred in respect thereof, which will meet its own fate. Considering that the Respondent was not appointed as an administrator of the subject flat or the sum of Rs. 3.5 crores, the expenses incurred towards the judicial proceedings of Suit No. 1427 of 2021 cannot be to the

detriment of other beneficiaries or claimed to be legitimate expenses under Section 321 of Succession Act. In the present application, there is no relief sought insofar as bringing back the funds spent towards the Suit proceedings and it is only the removal of the Respondent as administrator and appointment of any proper person as an administrator which is sought.

40. It is an admitted position that the Respondent has utilized the set aside corpus from sale proceeds of the shares, for the purpose of funding the Suit going on between the Petitioner and the Respondent. The set aside corpus was initially Rs. 10 Crores and in the year 2022, the beneficiaries were paid Rs. 1 Crore each and thus the balance Corpus was Rs. 6 Crores. Out of this, the Respondent as administrator has claimed expenses of Rs. 5,17,13,613/- literally wiping out the corpus. It is a deliberate act of mismanagement of the funds of which the Respondent was appointed as administrator and was required to be distributed to the beneficiaries. The Court Commissioner's Report sets out that the Respondent in addition to receipt of her share in distribution from the estate, has received Rs. 67,23,250/- towards Administrator's fees and Rs. 97,09,641/- as reimbursement of expenses initially incurred by her. Section 309 of Succession Act provides that an administrator shall not be entitled to receive or retain any commission or agency charges at a rate higher than that fixed for Administrator

General under Administrator General's Act, 1913. The provisions do not give carte blanche to the Administrator to charge exorbitant fees and regulates the same.

41. The reliance placed by Mr. Lohia on Section 321 of the Succession Act providing for the expenses which may be necessary for administering the estate will necessarily apply where the Respondent was appointed as an administrator, and in the particular case, it is only in respect of the specific assets of the deceased that the Respondent was appointed as an administrator, and therefore, the said provision will not have any application in respect of the other estate.

42. Pertinently, the Petitioner herein, who is the Defendant in Suit No. 1427 of 2019 claims that the suit flat i.e. Flat No. 308 was given by the deceased during his lifetime to the present Petitioner and cannot form part of estate of the deceased. The claim in respect of the suit flat is not a claim adverse to the title of the testator but an alleged claim of ownership by reason of the title passed by the deceased during his lifetime to the Petitioner. Whether the suit flat forms part of estate of the deceased is yet to be determined in the Suit proceedings but till the claim is decided, the Respondent, in any event, cannot claim the expenses incurred in the Suit proceeding as administration expenses. The interim orders passed in the Suit proceedings cannot justify the mis-utilization of the sale proceeds of the shares towards the expenses of

the Suit proceeding and are arguments of prejudice.

43. As it is the own contention of the Petitioner that the Respondent was appointed as an administrator only in respect of the movables of the deceased i.e. the shares and the amount lying in the Standard Chartered Bank, even upon removal of the Respondent as an administrator, the Respondent is not precluded from continuing with the Suit which was instituted by her claiming 1/4th share and for administration. The apprehension expressed by the Respondent that the present proceedings are aimed at preventing Respondent from continuing with the pending suit is thus taken care.

44. The appropriation of about Rs. 5 crores 17 lakhs towards the litigation in respect of which the Respondent was not appointed as an administrator constitutes misconduct and is not a minor lapse or error. The Testamentary Court being a Court of conscience cannot permit the administrator to continue to act to the detriment of the beneficiaries. The application thereof deserves to succeed.

45. Now dealing with the citations relied upon by Mr. Lohia, in the case of ***The Union of India vs The Official Assignee of Bombay*** (supra) the question which arose before the Division Bench of this Court was as to the scope and extent of solicitor's right to his cost and expenses in an administration suit against the rival claim of the State in respect of income tax dues. The decision arose in the context of Solicitor's lien for

the taxed costs in priority over income tax liability in context of administration of estate of the deceased who was adjudged an insolvent. In such facts, the Court held that the testamentary expenses include expenses of any proceedings taken for administration of the estate of the deceased person upon succession without a testamentary document and would include the cost of administration action. There is no quarrel with the said proposition. In event the administration suit is decreed, the Respondent's claim towards administration expenses can be considered in the said proceeding, however, the Respondent is not entitled to unilaterally appropriate the sale proceeds from sale of shares towards the expenses incurred in the Suit proceeding of which Respondent is not appointed as administrator.

46. In the case of ***Abha Dastane-Rao And Ors. vs Prabhakar Deolankar And Ors.*** (supra), the Court considered the provisions of Section 301 of the Succession Act and noted that unless there is gross misconduct, serious mismanagement, misuse or misapplication of the estate are shown, the Court will not readily remove the executor who has appointed probate nor appoint the receiver of the estate in his hands. It held that there must be clear evidence that the executor's continuance is detrimental or injurious to estate. The decision would in fact, assist the case of the Petitioner as the facts of the present case shows serious mismanagement of the estate of the deceased of which

the Respondent was appointed as an administrator.

47. The material on record clearly discloses case of mismanagement of the assets in respect of which the Respondent was appointed as Administrator, which does not include Flat No. 308, Shalaka Co-operative Housing Society Ltd and loan amount of Rs 3.5 Crores given to M/s Rare Enterprises. In light of the above, I am inclined to allow the Petition and remove the Respondent as Administrator and appoint the Court Receiver, High Court, Bombay as administrator in respect of the balance reserve as set out in the Court Commissioner's report. Hence the following order is passed:

ORDER

- (a) The Petition stands allowed in terms of prayer clause (a).
- (b) The Court, Receiver, High Court, Bombay is appointed to act as Administrator in respect of balance reserve as set out in Court Commissioner's report.
- (c) Within period of three weeks, all records/documents relating to the liquidated assets of the deceased be handed over by the Respondent to the Court Receiver.
- (d) The Court Receiver to distribute the balance reserve amongst the beneficiaries after deducting the costs, charges and expenses of the Court Receiver for administration of the estate.

(e) The entire exercise be completed by the Court Receiver within a period of two months and report be submitted to this Court.

(f) Liberty to the Petitioner to adopt appropriate proceedings seeking directions to the Respondent to make good the deficit of the amount to which the beneficiaries are entitled in terms of the Consent terms. All right and contentions of all parties in that regard are expressly kept open.

(g) Interim Application does not survive for consideration and stands disposed of.

(SHARMILA U. DESHMUKH, J.)

48. At this stage, request is made by Mr. Lohia for stay of the present Order. The said request is opposed by Mr. Shah learned counsel appearing for the Petitioners. The present Order is stayed for a period of four weeks, subject to the Respondents filing an undertaking in this Court within a period of one week that the balance reserve which is in the hands of the Respondent will not be dealt with by the Respondent till appropriate orders are obtained from the Appellate Court.

(SHARMILA U. DESHMUKH, J.)