

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**LV-VC-GSP-INTERIM APPLICATION NO. 1 OF 2020**  
**IN**  
**LC-VC-GSP-75 OF 2020**  
**(To be renumbered subsequently)**

Nitin G Thakker ... Applicant

**In the matter between:**

Nitin Thakker & Anr ... Plaintiffs

*Versus*

State of Maharashtra & Ors ... Defendants

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**Mr Sharan Jagtiani**, *Senior Counsel a/w Gaurav Mehta, Chaitanya Mehta, Lalan Gupta, Shivangi Agarwal & Sarah Thanawala i/b M/s Dhruve Liladhar & Co for the Plaintiffs.*

**Ms Jyoti Chavan, AGP**, *for the 1st Defendant State.*

**Mr NG Thakker, Senior Counsel**, *1st Plaintiff, present in person.*

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**CORAM: G.S. PATEL, J**  
**(Through Video Conference)**

**DATED: 13th August 2020**

**PC:-**

1. This is an unusual suit.

2. The 1st Plaintiff is a Senior Advocate of this Court. He has been in practice for over 50 years. The 2nd Plaintiff is a Solicitor and an Advocate and used to work for Shri Kirit Navnitlal Damania for several years. The 1st Defendant is the State of Maharashtra through its Chief Secretary and the 2nd Defendant is the Union of India through Ministry of Health and Family Welfare. The 3rd Defendant is the Union Bank of India. The Defendants have been served.

3. The Applicant in the Interim Application is the 1st Plaintiff.

4. The circumstances in which this suit comes to be filed are tragic. Mr Damania is today 87 years old. He was born on 28th May 1933. He qualified as a Solicitor and Advocate and started practice with the firm M/s Bhaisankar Kanga & Girdharilal. Later, he set up his own firm bearing his name M/s Kirit N Damania and Company. He was its sole proprietor.

5. On 16th March 2006, Mr Damania formed a charitable trust called the Shri Rang Avdhoot (Poojya Bapji Nareshwar) foundation along with two others as trustees. The trust has various charitable purposes, and over a period of time Mr Damania made several significant donations to very causes including in the medical field.

6. There are two Additional Affidavits filed by Mr Thakker, the 1st Plaintiff and the Applicant before me. In the second Affidavit, he amplifies on what is stated in paragraph 3(c) of the Plaint: that Mr Damania was unmarried, his two sisters died in 2003 and 2010 respectively, and that he has no lineal descendants. That Affidavit is

to be fully affirmed in the normal course and is to be filed in the Registry along with the physical filings of these papers. I will turn to the other Additional Affidavit a little later.

7. It seems that Mr Damania has several health problems including of the heart and kidney. He also has diabetes and blood pressure problems. He has a caretaker, a personal chauffeur and a domestic servant. There is no one else in the family. Mr Damania lives alone in Flat No 113, Rewa Apartments at Mahalaxmi (Bhulabhai Desai Road), Mumbai 400 026.

8. A few days ago on 25th July 2020, Mr Damania was admitted to the Intensive Care Unit of the Sir HN Reliance Foundation Hospital and Research Centre under the treatment and supervision of Dr Manoj Mashru. He was in the ICU for some time and was later shifted to a room. The documents annexed to the Plaint indicate that he is now completely bed-ridden and is incapable of making any cogent decisions for himself. His cognitive abilities seem to have been totally impaired. Though he is conscious, he cannot recognize anyone. It seems that Mr Damania never issued any Power of Attorney or appointed any Constituted Attorney to represent him or to attend to his affairs. Just a few days ago, Mr Damania then had an attack of meningitis. His condition is now said to be critical.

9. Mr Damania is also the executor of the Will of one Nagindas Vora along with some others. Under this Will, some amounts were payable to one Amit Vora, the son of the deceased testator. The 1st Plaintiff has learnt that the executors had decided to keep the amount

payable to Amit Vora in a fixed deposit in the name of Mr Damania jointly with the 2nd Plaintiff. On 3rd August 2020, when Amit Vora and the 2nd Plaintiff went to the 3rd Defendant-bank, the Branch Manager insisted on the signatures of both holders (i.e., including Mr Damania) as there would have to be a premature encashment.

10. It also seems that there is an amount of Rs. 30 Lakhs deposited in the client account of M/s Kirit N Damania and Company from 1995 onwards. This amount, with accrued interest, will have to be returned.

11. Mr Damania's present hospital bills — and these are significant, over Rs. 1 lakh per day — are being paid partly through his credit cards and partly by Mr Damania's friends and well-wishers. It is not possible for Mr Damania to operate his bank accounts or to attend to his daily affairs.

12. It is in these circumstances that the 1st Plaintiff presents this suit and interim application to be recognized as the guardian of Mr Damania including in respect of all his personal and professional affairs.

13. Paragraph 5 of the Plaint reads thus:

**“5.** Bank accounts and personal FDs:

The Plaintiffs have been able to ascertain that there are 2 Bank Accounts with Defendant No. 3 i.e. M/s Kirit N. Damania & Co. A/c. No. 317901010021346, with Union

Bank of India Samachar Marg Branch, which is a cost account of M/s Kirit N. Damania & Co.

ii. M/s Kirit N. Damania & Co. A/c No. 317902170043204 is a client account which is with Union Bank of India, Samachar Marg Branch. Copies of the last available statements of both these accounts are annexed as Exhibits - **“F” & Exhibit - “G”** respectively.

iii. There are FDs of Rs.50,00,000/- and Rs.5,00,000/- and Rs.64,41,342/-, respectively. Copies whereof are hereto annexed as Exhibit - **“H”**, Exhibit - **“I” and Exhibit - “J”** respectively, where one of the FD is payable to former for survivor.

iv. The nomination procedure in the Society is required to be followed up.

v. Several original documents of the clients are lying with Kirirtbhai. It is submitted that with the help of the Plaintiff No. 2 the said work is desired to be done by the Plaintiff No. 1 so that **no prejudice is caused to any clients.”**

14. **In paragraph 6 the Plaintiffs set out that they have no monetary interest in Mr Damania’s properties or his residential flat at Rewa Apartment at Mahalaxmi or any bank accounts or financial holdings. They only submit that Mr Damania is in urgent need of a legal guardian to look after his obligation including claim for his medical treatment and managing his affairs.**

15. **The other Additional Affidavit filed by the 1st Plaintiff says that it has recently come to light that there is another fixed deposit with HDFC Limited. This is a senior citizen deposit with a monthly income plan No. BO/5052062, dated 11th May 2017. There is also an**

account with the Bank of India, Mahalaxmi Branch, No. 0028101000008363 where some monthly interest is being deposited. Neither HDFC Limited nor Bank of India are as yet parties to this Suit as yet. However, in the facts and circumstances of the case, I am confident that they will submit to orders of the Court and I will not delay an order pending an amendment but will proceed immediately to make an order.

16. My attention is also drawn to an order made by SJ Kathawalla J on 6th March 2017 in Suit (L) No. 120 of 2017 in very similar circumstances. The Suit itself was disposed of in terms of prayer clauses (a) and (c) at that hearing itself.

17. The present situation may be slightly different in the sense that the matter before Kathawalla J did involve family members thus conceivably bringing it within the frame of Order 32-A of the Code of Civil Procedure 1908. That order speaks of suits relating to matters concerning a family.

18. Order 32-A, Rule 1 read thus:

Order 32A— Suits relating to matters concerning the family

1. Application of the Order

(1) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

(2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order

shall apply to the following suits or proceedings concerning the family, namely:—

- (a) a suit or proceeding for matrimonial relief, including a suit or proceeding for declaration as to the validity of a marriage or as to the matrimonial status of any person;
  - (b) a suit or proceeding for a declaration as to the legitimacy of any person;
  - (c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;
  - (d) a suit or proceeding for maintenance;
  - (e) a suit or proceeding as to the validity or effect of an adoption;
  - (f) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;
  - (g) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.
- (3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

*(Emphasis added)*

19. **Order 32-A, Rule 6 defines “family”:**

6. “Family”—Meaning of

For the purposes of this Order, each of the following shall be treated as constituting a family, namely: —

- (a) (i) a man and his wife living together,
  - (ii) any child or children being issue of theirs; or of such man or such wife,
  - (iii) any child or children being maintained by such man and wife;
- (b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;
- (c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;
- (d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and
- (e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.

*Explanation*—For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of “family” in any personal law or in any other law for the time being in force.

20. **The present case falls only partly within the provisions of Order 32-A(2)(c). But as this Plaintiff points out, the state of the law in**



India simply does not make any sort of provision for a situation such as the present one. Mr Damania is neither mentally challenged, nor of unsound mind nor a minor. He has no family. He is incapacitated by an illness and the current laws of guardianship do not provide any recourse in a situation like this. This is, therefore, something of a vacuum in law. That, however, does not mean that Courts are helpless or that situations such as these should go unattended and unaddressed. I can draw support from the provisions of Order 32-A of the CPC, Kathawalla J's previous order of 6th March 2017 and also in a properly brought Suit make reference to the omnibus provision for doing substantial justice that we find in Section 151 of the CPC. This says that nothing in the CPC *limits* or otherwise affects the *inherent* power of the Court to make such orders as may be necessarily for the ends of justice or to prevent the abuse of the process of the Court.

21. Mr Jagtiani correctly points out that the present action takes the form of a 'suit' only because in our jurisprudence this is the fundamental or most basic form of bringing a matter to court. There is, however, strictly speaking no '*lis*' between the Plaintiffs and any of the Defendants. There is no matter on which issues can or should ever be struck. There is no element of public law that is the essential facet of a writ proceeding under Article 226 of the Constitution of India. This is, therefore, only a plea for the immediate intervention of the court in a purely private law dimension. I note, too, that it cannot be a 'petition' or a 'miscellaneous application' because those forms are always under dedicated statutes with special provisions to that effect. Hence, this 'suit'.

22. It therefore seems to me at once apparent that this is a kind of suit that will lie entirely outside the usual frame of a regular suit, i.e., of the kind that demands the issue and service of a writ of summons, a written statement and so on. For the reason that there is no 'lis', too, the suit is one that admits of an order of court simply on the court being satisfied as to the (1) the cause of action presented and (2) the credentials of the plaintiffs. On neither count is there any cause or room for hesitation.

23. What is, however, required is an amendment to the prayers in the plaint to mould the relief. This can always be done, and the only endeavour of Mr Jagtiani is, first, to retain the generalized wording of prayer (a) and simultaneously provide for more specific provisions to deal with those assets of Mr Damania that are today known. Thus, the additional reliefs will extend to the HDFC Ltd Fixed Deposit, the Bank of India account and a nomination in regard to the Rewa Apartments residential flat (one already made by Mr Damania, duly witnessed, with the Trust as the nominee).

24. Mr Jagtiani moves an amendment. Leave to amend. The draft amendment is annexed to this order for completeness. The amendment is to be carried without need of reverification within three weeks. Service of the amended plaint dispensed.

25. There can be no opposition to this Suit. I will therefore follow the path set by Kathawalla J and decree the Suit in the following terms.

(a) That this Hon'ble Court be pleased to declare, recognize and appoint the Plaintiff No.1 as the lawful Guardian of Shri Kirit N. Damania and manager of the movable and immovable assets, properties, affairs including but not limited to authorizing Plaintiff No 1 to operate Bank Accounts of the said Kirit N. Damania and his firm Kirit N Damania & Co as more particularly stated in the Schedule annexed hereto as Exhibit "K", and thereby grant authority to the Plaintiff No.1 to deal with the same for the benefit/treatment of the said Kirit N. Damania and the upkeep of his affairs;

(b)(1) to direct Union Bank of India, Mahalaxmi Branch by a mandatory order of injunction to recognize Plaintiff No.1 as the legal guardian of the said Kirit N. Damania and to act on his behalf as such;

(b)(2) to direct Bank of India by a mandatory order of injunction to recognize Plaintiff No.1 as the legal guardian of the said Kirit N. Damania and to act on his behalf as such;

(b)(3) to direct HDFC Limited by a mandatory order of injunction to recognize Plaintiff No.1 as the legal guardian of the said Kirit N. Damania and to act on his behalf as such;

**26. In addition, the following shall be read as part of the order in view of the foregoing discussion:**

To direct the Rewa Apartments society or condominium and its managing committee to permit the 1st Plaintiff to execute all necessary documents and deeds in regard to the nomination by Mr Kirit N. Damania of Flat No. 113 of Rewa Apartments for and of Mr Kirit N. Damania.

27. The order in terms of the original prayer (b) is too generalized in its wording. It will serve no purpose and therefore need not be granted. If there is a specific authority required, liberty to the Plaintiffs to apply notwithstanding this order.

28. Drawn up order/decreed dispensed with.

29. The Suit and Interim Application are disposed of in these terms. There will be no order as to costs.

30. Refund of the Court fees in accordance with the Rules. For the purposes of Section 43 of the Maharashtra Court Fees Act and the proviso to that Section, today's date is the date of making a claim for repayment. The Prothonotary & Senior Master will issue a certificate for a refund of Court Fees computed according to the Rules. He will act on production of an authenticated copy of this order without requiring a separate application.

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

**(G. S. PATEL, J)**



3. In Para 5 of the Plaint at Pg. 12, to add the following after para (ii) as “5(ii)(a) – Kiritbhai Damania holds an account with Bank of India, Mahalaxmi Branch being Bank Account Number 002810100008363. The said Kiritbhai along with Plaintiff No.2 is also holding a Fixed Deposit of Rs. 10,00,000/- in HDFC Ltd. bearing deposit number BO/5052062 dated 11<sup>th</sup> May, 2017. Hereto annexed and marked as Exhibit. “G-1” is a copy of the Fixed Deposit.”
4. In Para 6 of the Plaint at Pg.13, after the words “various Banks including” to add the following words after “but not limited to Bank of India and”
5. In Para 6 of the Plaint at Pg. 13, to add the following “(iv) No. BO/5052062 dated 11<sup>th</sup> May, 2017 for Rs. 10,00,000/- issued by HDFC Limited ”
6. In Prayer clause(a) of the Plaint at Pg. 19 to delete the last word of the 1<sup>st</sup> line “and” and add the word “including but not limited to”.
7. In Prayer clause (a) of the Plaint at Pg. 19, after the words “Kirit N. Damani a& Co.” add the following words “as more particularly stated in the schedule annexed hereto as Exhibit “K”

8. To add the following prayers after prayer clause (b) of the Plaint at Pg. 19:

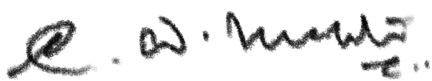
“b(1) to direct Union Bank of India, Mahalaxmi Branch by a mandatory order of injunction to recognize Plaintiff No.1 as the legal guardian of the said Kirit N. Damania and to act on his behalf as such”

“b(2) to direct Bank of India by a mandatory order of injunction to recognize Plaintiff No.1 as the legal guardian of the said Kirit N. Damania and to act on his behalf as such”

“b(3) to direct HDFC Limited by a mandatory order of injunction to recognize Plaintiff No.1 as the legal guardian of the said Kirit N. Damania and to act on his behalf as such”

Dated this 13<sup>th</sup> day of August, 2020

For M/s. Dhruve Liladhar & Co.



**Partner  
Advocates for Plaintiffs**

**HDFC DEPOSITS**  
WITH YOU RIGHT THROUGH

**HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED**  
**DEPOSIT RECEIPT**  
NOT TRANSFERABLE

SENIOR CITIZEN DEPOSITS  
MONTHLY INCOME PLAN (INDIVIDUALS)

Received with thanks from  
KIRIT NAVNITLAL DAMANIA  
FLAT NO 113 REWA APT 11TH FLOR  
TG PAVILLION COM BHULABHAI  
DESAI RD  
MUMBAI-400026  
BO/5052062

Cust No : 61510545      Mob : 9820021370  
PAN : AABPD1843R

Deposit No: BO/5052062  
Date : 09-MAY-2017  
Branch : SCRIPLS OFFICE  
1, SRANGRILA APPL, ORIENTAL APTS  
1, T ROAD  
SCRIPLS WEST  
MUMBAI-400033  
Tel: 022-67541080  
Email : deposit@hdfc.com

Deposit Number	Deposit Date	Deposit Period	Maturity Date	Interest Rate (p.a.)	Deposit Amount(₹.)	Maturity Amount(₹.)
BO/5052062	11-MAY-2017	60 Months	11-MAY-2022	7.40%	10,00,000	

Rupees : Ten Lakhs Only

PAYABLE MONTHLY (through ECS)  
Bank Account No : 002810100008363  
MICR Code : 400013034  
IFSC Code : BKID0000028  
Bank/Branch Name : BANK OF INDIA, MAHALAXMI  
Joint Depositor-1:AURA JOHN D'SOUZA-Cust NO. \_\_\_\_\_  
Deposit Repayable to : FIRST DEPOSITOR OR SURVIVOR  
Agent : BM/5742  
Ref. Cheque no.28171

ACKNOWLEDGEMENT SLIP  
( To be filled in by the Sole/First Applicant )  
54EC Bonds-SERIES XI

**REC** RURAL ELECTRIFICATION C  
(A Government of India Scheme)  
Regd. Office : Cor-4, SCOPE Complex

Received from Mr./Ms./Ms KIRIT NAVNITLAL DAMANIA  
DPID & CLIENT ID NO. \_\_\_\_\_  
Address \_\_\_\_\_  
**INDUSIND BANK LIMITED**  
FORT BRANCH, MUMBAI  
02 MAY 2017  
**RECEIVED**

H

12210152



## **EXHIBIT “K”**

### **A. Client’s Account Deposits (Para 4(a) & (b) at Pg. 9 & 10 of the Plaintiff)**

<b>Sr. No.</b>	<b>Name</b>	<b>Details of the Deposit</b>	<b>Amount in Rs.</b>
1.	Amit Nagindas Vora	Fixed Deposit dated 25 <sup>th</sup> April, 2016 matured on 25 <sup>th</sup> April, 2017 and auto renewed by the Defendant No.3	64,41,342/-
2.	Mr. Maradia	Amount deposited from 1995 onwards	30,00,000/-

### **B. Personal Bank Accounts (Para 5- Pg. 11 of the Plaintiff) (Para 3 – Additional Aff. At Pg. 12)**

<b>Sr. No.</b>	<b>Account Number</b>	<b>Details of the Bank Account</b>	<b>Amount in Rs.</b>	<b>Ref.</b>
1.	317901010021346	Union Bank of India, Samachar Marg Branch	40,31,156.42/-	Ex. F – Pg. 43 TO 47
2.	317902170043204	Union Bank of India, Samachar Marg Branch	22,86,945.80/-	Ex. G – Pg. 48 TO 50
3.	0028101000008363	Bank of India, Mahalaxmi Branch		

### **C. Personal FD’s (Para 5 & 6 – Pg. 11 & 12 of the Plaintiff) (Para 2 – Additional Aff. At Pg. 12)**

<b>Sr. No.</b>	<b>Fixed Deposit Number</b>	<b>Date of the Fixed Deposit</b>	<b>Details of the Bank</b>	<b>Amount in Rs.</b>	<b>Ref.</b>
1.	317903061020326	26.11.2014	Union Bank of India, Samachar Marg Branch	50,00,000/-	Ex. H – Pg. 51
2.	317903032041498	25.04.2016	Union Bank of India, Samachar Marg Branch	64,41,342/-	Ex. J – Pg. 53
3.	317903061020591	11.06.2019	Union Bank of India, Samachar Marg Branch	5,00,000/-	Ex. I – Pg. 52
4.	BO/5052062	11.05.2017	HDFC Limited	10,00,000/-	Anx. B – Pg. 14