

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 37 OF 2015
IN
TESTAMENTARY SUIT NO. 100 OF 2014
IN
TESTAMENTARY PETITION NO. 1505 OF 2013**

Mr. Ashish Hemendra Shah	...Applicant
<i>In the matter between</i>	
Mr. Ashish Hemendra Shah	...Plaintiff
<i>Versus</i>	
Anjali Hemendra Shah	...Defendant

Ms. Meena Shah, i/b M/s. Pandya & Co., for the Plaintiff.
Mr. Atul Damle, Senior Advocate, with Mrs. Jarwala, i/b M/s.
Auroma Law, for the Defendant/Caveator.

CORAM: G.S. PATEL, J
DATED: 28th July 2015

PC:-

1. The limited objection taken in the Caveat is that the entire estate of the deceased has not been disclosed in the Petition. As Mr. Damle, learned Senior Advocate for the Defendant, points out that

in paragraph 3 of the Affidavit in Support of the Caveat, the Defendant states that:

3. ... I further say that I am opposing grant of probate to the Petitioner for the limited purpose only to the extent of compelling the Petitioner to make true and full disclosure of the estate and properties of the deceased standing in his individual capacity, in the capacity of Karta of the HUF, in the capacity of partner of concerned firm/s and further in any form which was owned and possessed by him including the movable and immovable properties of my late mother Mrs. Nandini Shah as well as the assets of my grandfather and grandmother which has a specific reference in the will of my late father being kept in separate book and thereafter only the grant of probate be ordered in favour of the Petitioner.”

2. As against this, learned Advocate for the Plaintiff states that the executor, who has filed the probate petition has disclosed such of the estate as is to his knowledge. The executor, at the same time is willing to make a statement that he will make a full disclosure pertaining to all the movable and immovable properties mentioned in the Will, including the share of the deceased in any partnership or HUF. The Caveator for his part is willing to inform the Petitioner of the assets that are required to be included in the probate Petition and the Petitioner agrees and undertakes to include these by means of a suitable amendment in the probate Petition. Mr. Damle states that this is sufficient for his client’s purpose. He has obtained instructions by email not to oppose the Petition on the above statements by the Petitioner being accepted as undertakings

to the Court. Those statements are indeed indeed accepted as undertakings to the Court.

3. However, in my view, it is necessary, not least for the protection for the Petitioner himself, that the Defendant be permitted to continue as a party to the proceedings for the limited purpose of ensuring a complete disclosure of the assets in the estate so that the probate that is finally ordered to be issued covers all assets of the deceased. If the Defendant is allowed to withdraw from the proceedings entirely, it is possible that both the Plaintiff and Defendant will be ill served and put to disadvantage; and that this might, in turn, lead to further litigation that is perhaps best avoided by a simple direction at this stage itself. For, any such extended dispute will not serve the interest or cause of either of the parties. Mr. Damle agrees that his client has, therefore, no opposition to the grant of probate subject, of course, to the complete disclosure and necessary amendments being made to the probate Petition. However, till the time probate is granted, the Defendant will continue to be shown as Defendant in the present proceedings.

4. In view of the above, there is no question of framing issues. The registry is directed to proceed with the Petition as an uncontested Petition. Mr. Damle states that his Attorneys will forward to the Advocate for the Petitioner a list of the assets that the Defendant is required to include in the schedule annexed to the Petition. This will be done by 24th August 2015. By 7th September 2015, the learned Advocate for the Petitioner will make an application for amendment to the Petition. This application for

amendment need not be by means of a formal Chamber Summons but can be in the form of draft amendment with notice to the Advocates for the Defendant.

5. List the Notice of Motion and the Testamentary Suit for directions on 9th September 2015.

(G. S. PATEL, J.)