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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 74 OF 2015
IN
CAVEAT (L) NO. 58 OF 2015
IN
TESTAMENTARY PETITION NO. 1243 OF 2014**

Satish Damodar Tamhankar	...Applicant
<i>In the matter between</i>	
Sandeep Damodar Tamhankar	...Petitioner
<i>Versus</i>	
Satish Damodar Tamhankar	...Caveator/ Defendant

Mr. Arvind Taral, *for the Petitioner.*
Mr. Victor Fernandes, *for the Applicant.*
Mr. Ram Kapse, *Additional Prothonotary & Senior Master, High Court, Bombay.*

CORAM: G.S. PATEL, J
DATED: 22nd June 2015

PC:-

1. This is an application seeking that a delay of four days in filing the caveat be condoned. The caveat is already filed, but remains under objection for this reason. A consequential prayer is for leave to file an Affidavit in Support of that Caveat.

2. I am satisfied from the Affidavit in Support that a sufficient cause has been made out, particularly in view of the averments in paragraphs 2(a), 3(a) and 4 of that affidavit.

3. It would have ordinarily been sufficient to allow this Chamber Summons with these observations. However, the Applicant has raised a further ground in paragraph 3(b) and 5. In these paragraphs, the Applicant says that he was not served with a copy of the Petition and its annexures.

4. Rule 397 of the Bombay High Court (Original Side) Rules deal with the notice required to be given to the next of kin. The Rule reads thus:

“R.397. Notice of next-of-kin.—(1) In all applications for probate, letters of administration and succession Certificate, notice of the application shall be given to all the heirs and next-of-kin of the deceased mentioned in the petition except to those whose consent has been filed in the proceedings.

(2) In all applications for probate and letters of Administration the citation shall be affixed on some conspicuous part of the Court house and also in the office of the Collector of Bombay.

(3) In all applications for succession certificate, notice of the application shall be affixed on some conspicuous part of the Court house.

(4) No grant of probate, letters of administration or succession certificate shall be made until after the expiry of fourteen clear days from the date of the service of the citation or notice, and from the publication thereof in newspapers, if any, and from the affixing

thereof on the court house and in the Collector's Office as the case may be, unless the Judge in Chambers otherwise directs."

5. Citation is to be served in the manner provided in Rules 399 and 400.

"R.399. Service of citations.— Citations shall be served personally when possible. Personal service shall be affected by leaving a true copy of the citation with the party cited and taking his acknowledgement on the original.

R.400. Service by advertisement.— Citations which cannot be personally served as required by the last preceding rule shall be served by publishing the same in such local newspapers as the Prothonotary and Senior Master may direct."

6. Upon service of the citation, any person who intends to oppose the petition is required to file a Caveat in Form No. 116 within fourteen days of such service and an Affidavit in Support service (Rule 402) within eight days thereafter.

7. Form 115 appended to the Bombay High Court (Original Side) Rules gives a format of the citation that is served. This is described as a "citation to see proceedings". In other words, this notice requires the noticee to come to the High Court, apply for search, take inspection, and then file a Caveat within fourteen days of such service followed by an Affidavit in Support support of that Caveat within eight days thereafter.

8. I see absolutely no reason why a copy of the Petition with its annexures (including the Will itself) should not be served by the Petitioner and accompany the notice or citation. Nothing in our Rules prevents or prohibits this. In a regular civil suit, a copy of the plaint is required to accompany the writ of summons. A contested testamentary proceeding, which is the outcome once a Caveat and Affidavit in Support, is renumbered as a suit and tried as such. In short, what this means is that in testamentary proceedings there is no need to serve a copy of the petition although that petition may later be tried as a suit, but in a regular suit the Plaintiff himself serve a copy of the plaint. This is inconsistent and incongruous. It puts the noticee conceivably at a very great disadvantage, especially if the noticee does not reside in Mumbai; more so if the noticee lives abroad. I believe it would be in the interest of expedition and would avoid such grounds being taken to condone delay if a copy of the testamentary petition is directed to be served by the Petitioner in addition to the notice under Rules 397/399.

9. Indeed, I can see no logical or compelling reason why a copy of the petition ought not to be so served. Once that copy is made available, the noticee can then set out more precisely the grounds of opposition to the Will itself and it will not then be open in every case for the noticee to make a complaint about not having sent a copy of the petition. This will expedite matters, something that I believe is necessary given that there are delays of several decades in regard to the administration of estates.

10. For these reasons, the Testamentary Department of the High Court is directed to immediately ensure that henceforth a true copy

of the Petition authenticated by the Advocate for the Petitioner along with all its annexures is served by the Petitioner on the next of kin in addition to the notice issued under Rules 397/399. This service is effected by the Advocate for the Petitioner to the satisfaction of the Department.

11. Place a copy of this order before the Prothonotary and Senior Master as also before the Additional Prothonotary and Senior Master, High Court, Bombay.

12. The Chamber Summons is made absolute in terms of prayer clauses (a) and (b). A copy of the petition will be served on the Advocate for the Applicant during the course of the day. Affidavit in Support of the caveat to be filed and served on or before 30th June 2015.

13. Upon the Affidavit in Support being filed as directed, the Petition to be renumbered as a Suit and to be placed for framing issues on the supplementary board on 14th July 2015. If the Affidavit in Support is not filed, Caveat to stand discharged without further reference to the Court; and the Applicant is put to notice that the Caveat will not thereafter be restored to file.

(G. S. PATEL, J.)