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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO. 609 OF 2014
IN
SUIT NO.4326 OF 1997**

Ram Prakash Ramlal Mehta alias R.Parkash
Mehta & Anr. ...Applicants

In the matter between
M/s White Rose Developers Pvt. Ltd. ...Plaintiff

VS

Sharanpal Balmukund Chopra & Ram Parkash
Ramlal Mehra & Anr. ...Defendants

.....
Mr Pradeep Bakhru a/w Neel D'souza i/b M/s Wadia Ghandy & Co. for the
Plaintiff.

Mr Hiralal Thackor, Sr. Advocate a/w Ms Meera Patel and Ms Urvi Patel i/b M/s
M.M.Patel & Co. for the Applicants.

.....

CORAM : S.C. GUPTE, J.

FEBRUARY 23, 2015

P.C. :

This Chamber Summons is taken out by the Applicants, who claim to be the legal representatives of the deceased Defendant, entitled to represent the estate of the deceased. The legal representation by the Applicants to the estate is claimed on the basis of the last will and testament of the deceased Defendant dated 2 December 2013, under which the Applicants have purportedly been appointed as executors. The Chamber Summons is opposed by the original Plaintiff on the ground that the right as an executor is not yet established by the Applicants in any court of justice and that unless a probate has been granted of the will, no right can be claimed by the Applicants as the alleged executors. This issue has already been covered by a judgment of the Division Bench of this Court in the case of **Manoj Karam Vs Ram Tuljiram Shahani &**

Ors¹. It is clear from the law laid down by our Court in that case that laying of a claim as an executor is different from establishing the right as an executor. As of now, the Applicants claim as executors of the will of the deceased Defendant entitled to represent his estate. Whether they have established such right or not is a matter which will arise in the course of the trial. As of now, the Applicants are entitled to be impleaded as party Defendants in place of the deceased Defendant. The Chamber Summons is, accordingly, made absolute in terms of prayer clauses (a) and (b). All rights and contentions of the parties, on merits of the averments in the impleadment application, are kept open. The amendment to be carried out within a period of two weeks from today. Service of the Writ of Summons is waived by the learned Counsel for the Applicants.

(S.C.GUPTE J.)

1 Appeal (L) No.281 of 2013 decided on 25 September 2013.