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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 73 OF 2015
IN
TESTAMENTARY SUIT NO. 70 OF 2012
IN
TESTAMENTARY PETITION NO. 737 OF 2012**

Olga Rodrigues & 2 Ors.	...Plaintiffs
<i>Versus</i>	
Christopher Pinto & 15 Ors.	...Defendants

Mr. Zubin Behramkamdin, i/b Mr. M.G. Gawde, for the Plaintiff.
Mr. Dhaval Mohan, i/b M/s. Thakore Jarimala & Associates, for
Defendant No. 3.

CORAM: G.S. PATEL, J
DATED: 30th June 2015

PC:-

1. Heard.

2. This is without doubt the most untenable and, in terms of what it attempts to convey, an offensive and possibly mischievous application. *Prima facie* it seems to be a thinly veiled attempt to delay the trial.

3. The only prayer in this Notice of Motion is that the matter be referred to the Commissioner for recording evidence. This is said to be on the basis that the trial before the Commissioner will be complete more quickly and with less expense. Neither statement is even remotely accurate.

4. I must note that this is a matter in which one or the other Defendants have at various times made applications for adjournment, including stating that one or more of them are yet to receive instructions from some other person. Cross-examination of the attesting witness, a solicitor of this Court, has actually begun in Court.

5. There is absolutely no reason why the matter like this should be sent to the Commissioner for recording evidence. My experience in that regard is that not only do such cross-examinations tend to sprawl without limit with a very large number of irrelevant questions and answers being recorded but that the delays are considerable, since the commissioner is often required to accommodate conflicting demands for convenience, including, of course, scheduling sessions around the convenience of counsel who are generally very busy with other work.

6. In the Affidavit in Support, the deponent delivers a wholly gratuitous and unwarranted homily on the nature of the cross-examination and optimal manner in which it should be recorded. It is not for the Defendant to advise a Court.

7. The deponent says that it is 'physically impossible' for the Court to record evidence. The Defendant is mistaken. This Court has recorded evidence. It has done so with no physical or other discomfort whatsoever. The deponent's solicitousness is touching, but unnecessary. In the context of previous applications for adjournment, it is also more than somewhat dubious. There is even today no difficulty in the Court proceeding with this matter. The only difficulty arises when advocates repeatedly seek time and refuse to go on.

8. In paragraph 11 of the Affidavit in Support, the deponent says that the legal costs on the original side of the High Court are extremely high. This is a submission that ought never to have been made. The issue of litigation costs is not news. When a Defendant enters the arena, he does so knowing what the costs are likely to be. In any case, costs are not saved by going to the Commissioner. On the contrary: they multiply manifold, for parties then bear not only advocates' fees but also those of the Commissioner, venue and steno costs, and so on. In matter after matter before me, parties have declined going to a Commissioner only for this reason. Now the deponent suggests the reverse. The real purpose behind making this entirely misdirected submission suggests itself.

9. In any event, the question of costs is very easily addressed. If any Defendant finds costs too oppressive they have an embarrassment of choices. They can choose to discharge their advocates and appear in person. I frequently allow it, and that is every litigant's right. An even simpler solution is at hand: these financially oppressed Defendants have merely to withdraw their

opposition. Any defendant who does so will then have no legal costs as he or she will no longer have anything to defend. This simple and elegant solution seems wholly to have escaped this industrious and sedulous deponent.

10. There is not a single compelling justification in the Affidavit in Support of this Notice of Motion.

11. Since these Defendants now display such great enthusiasm to cross-examine the witness, and despite the fact that several months ago a Parsi Chief Matrimonial Session was scheduled and notified to commence from tomorrow, 1st July 2015 till 10th July 2015, this matter will be peremptorily placed for cross-examination of the Plaintiff's attesting witness on 2nd July 2015 at 4.00 p.m. If despite this order, an application is made hereinafter for an adjournment by these Defendants, I intend to close their cross-examination with no further notice.

12. This peremptory schedule should satisfactorily allay the so-called 'apprehensions' of delay, cost, physical and other discomfort etc expressed in the Affidavit in Support. In view of this, the Notice of Motion is disposed of as infructuous with no order as to costs.

(G. S. PATEL, J.)