

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 95 OF 2015
IN
TESTAMENTARY SUIT NO. 89 OF 2014
IN
TESTAMENTARY PETITION NO. 480 OF 2014**

Shrikrishnanand Arvind Velinker	...Applicant
<i>Versus</i>	
Smt. Kamalini Arvind Velinker & Ors.	...Defendants

Mr. G. Mehta, *a/w i/b D. Mehta, for the Plaintiff.*
Mr. A. Pai, *a/w Ms. Bina B. Pai i/b N. Thakkar for the Defendants*
No. 1 to 3.

CORAM: G.S. PATEL, J
DATED: 19th October 2015

PC:-

1. In my view, this Chamber Summons is not maintainable. It seeks leave, firstly, to file an Affidavit of one Nandkishore Deshmukh, one of the three executors appointed under the Will of which Probate is sought, renouncing executorship. Mr. Deshmukh has already said so in writing and his letter of renunciation is

annexed to the Petition. The Affidavit can be taken at the stage of trial or may be filed with the Registry. If tendered, the Registry is directed to take it on file. In view of that renunciation, there is no question of issuing a special citation under Section 230 of the Indian Succession Act to Mr. Deshmukh.

2. The contentious part of this Chamber Summons refers to the 1st Defendant. She is the Plaintiff's mother. She is also one of the three executors named in the Petition. The Petitioner is the third executor. The Petition was brought without seeking the 1st Defendant's consent, without reserving her right to join in the Probate and without showing that she had in writing renounced executorship.

3. Mr. Pai for the 1st Defendant is correct, in my opinion, in pointing out that paragraph 5 of the Petition only says that the 1st Defendant was "aware" of the Will but did expressed any view one way or the other. On that basis, the Petitioner claims to have been was entitled to bring the Petition in his sole name. In short, the Petition as originally filed proceeded on the basis of a deemed renunciation. It is settled law that there can be no such deemed renunciation under the Indian Succession Act.¹

4. Indeed, it is on this aspect of the matter, one that Mr. Pai says affect the maintainability of the suit, that an issue has been

¹ *In re: B. Laxmi Shanker & Anr.*, AIR 1941 Oudh 293 (FB); *Samir Chandra Das v Bibhas Chandra Das & Ors.*, (2010) 6 SCC 432; order dated 9th June 2015 in Notice of Motion No. 64 of 2014 in Testamentary Suit No. 15 of 2007, *Reena Sanjay Minz & Anr. v Jigna Jay Kantawala*

squarely drawn, viz., Issue No. 3 framed on 12th June 2015. Prayer (c) of the Chamber Summons seeks the issuance of a special citation to the 1st Defendant. This would effectively render Issue No. 3 completely nugatory, and Mr. Pai is correct when he says that granting prayer (c) at this stage of the Chamber Summons finally determines that issue against the 1st Defendant. The issue still remains as to whether the Petition can be said to have been validly and properly brought by the Petitioner in his sole name. I do not think that the issue can be circumvented by now issuing a citation under Section 230 of the Indian Succession Act to the 1st Defendant. This is now a contentious matter and will proceed as such.

5. The last prayer (d) of the Chamber Summons is perhaps a clue as to the real intent and purpose of this Chamber Summons. It seeks a rather strange order, one that is wholly unnecessary, for what is effectively a declaration that should the 1st Defendant renounce executorship, she should be held to be forever 'debarred' (to use the word from Chamber Summons; I presume what is meant is 'estopped' or 'prohibited') from applying for Probate of that Will. That is not a prayer that can ever be granted.

6. The Chamber Summons is dismissed. There will be no order as to costs. It is however clarified that the contentions of both Mr. Mehta for the Plaintiff and Mr. Pai for the Defendants No. 1 to 3 on the maintainability of the suit are expressly kept open to the final hearing of the suit since the issue on that has been specifically drawn.

(G. S. PATEL, J.)