

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

NOTICE OF MOTION NO. 58 OF 2016

IN

NOTICE OF MOTION NO. 23 OF 2015

IN

MISCELLANEOUS PETITION (L) NO. 1001 OF 20-7

IN

TESTAMENTARY PETITION NO. 935 OF 2006

Rajan Gopinath Khot & Anr.

...Petitioners

Versus

Prafulla Kamlakar Gavande & Anr.

...Respondents

Mr. Rajeev S. Matkar, *for the Petitioners.*

Mr. Jignesh Shah, *for the Respondent No. 3.*

CORAM: G.S. PATEL, J

DATED: 26th September 2016

PC:-

1. This Notice of Motion is taken out because Mr. Matkar points out in fairness that his previous Notice of Motion No. 23 of 2015 for restoration was allowed on the footing that an Affidavit of Service was on file. In fact, there was some misunderstanding or confusion in the papers; that Notice of Motion had not even been served. The papers were mixed up with those in another matter

between the same parties. This caused the Notice of Motion No. 23 of 2015 to be allowed. That was a Notice of Motion taken up by the present Applicant himself. The Applicant now seeks that the order dated 9th March 2016 allowing Notice of Motion No. 23 of 2015 be recalled and that the Applicant be allowed to serve Notice of Motion No. 23 of 2015 and that it thereafter be heard on merits. This is an eminently fair application, despite the delay.

2. On the ground of delay, this application is opposed. This is logically inconsistent: if I accept the opposition to this Notice of Motion, it would necessarily mean that the order dated 9th March 2016 stands. Upon my pointing this out, the objection is promptly withdrawn.

3. The present Notice of Motion No. 58 of 2016 is made absolute in terms of prayer clauses (a) and (b).

4. Notice of Motion No. 23 of 2015 is restored to file. It is to be served within two weeks from today.

(G. S. PATEL, J.)