

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.434 OF 2014
IN
CHAMBER SUMMONS NO.46 OF 2014
IN
TESTAMENTARY PETITION NO.687 OF 1999
WITH
NOTICE OF MOTION (L) NO.1762 OF 2014**

Cyrus Naval Mistry ...Appellant

Versus

Jal Homee Billimoria ...Respondent

Mr.Nitin Vatkar i/b Mr.G.S.Hiranandani, for the Appellant.

Mr.E.P.Bharucha, Senior Counsel a/w Mr.Firoj Bharucha i/b
Mr.D.R.Mishra, for the Respondent.

**CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE : 14th JANUARY, 2016

P.C. :

1. Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondent.
2. The appellant has challenged the order passed by the learned Single Judge in the Chamber Summons taken out by him for condonation of delay of 250 days to file affidavit in support of the caveat. The learned

counsel appearing on behalf of the appellant has taken us through the impugned order. The learned Single Judge has observed that the citation was not personally served upon the respondent/applicant. The learned Single Judge has therefore observed that since there was no service of citation, the limitation to file affidavit in support of the caveat or caveat did not commence and therefore merely because the caveat was filed in the year 2000 without service of citation was of no consequence.

3. We do not see any illegality or infirmity in the order passed by the learned Single Judge. We are not inclined to interfere with the order passed by the learned Single Judge allowing the chamber summons in terms of prayer clauses (a) and (b). No prejudice is caused to the appellant because though the Probate Petition was filed in the year 1999, till date he has not filed an affidavit in lieu of examination-in-chief of the contesting witnesses.

4. The Appeal is, therefore, dismissed.

REVATI MOHITE DERE, J.

V.M. KANADE, J.