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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 217 OF 2016
IN
TESTAMENTARY PETITION NO. 1156 OF 2014**

Rachana Chira Ranjan Alias Chiru Chakravarty	...Petitioner
<i>And</i>	
Chira Ranjan Chakravarty Alias Chiru Chakravarty	...Deceased

Ms. Trupti Bharadi, i/b Mr. Kedar J. Patil, for the Petitioner.

**CORAM: G.S. PATEL, J
DATED: 13th October 2016**

PC:-

1. The reason for the delay is that the Sheriff's Department misplaced the registered post acknowledgement due cards. No certificate that these cards were misplaced was issued. This resulted in additional delay being caused to the Petitioner.

2. The Notice of Motion is made absolute. The Petition is restored to file. All office objections to be removed on or before 23rd December 2016. The Notice of Motion is disposed of in these terms with no order as to costs.

3. This difficulty, in regard to the working of the Sheriff's Office, arises repeatedly in matter after matter. Rules 398 and 399 of the Bombay High Court (Original Side) Rules read thus:

"R.398. Issue and return of processes. — All processes and citations shall issue from and be returnable to the office of the Prothonotary & Senior Master and shall be prepared, signed and dated by him or one of his assistants and sealed executed and returned, in the same manner as processes in suits on the Original Side of the Court.

R.399. Service of citations. — Citations shall be served personally when possible. Personal service shall be affected by leaving a true copy of the citation with the party cited and taking his acknowledgement on the original."

4. The practice followed for personal service effected through the Office of Sheriff is that the packets are prepared and delivered to the Sheriff's office. The Sheriff's office then arranges for despatch of these packets for personal service through his bailiff, or arranges for dispatch by post.

5. It has been my experience over last two years that there are unacceptable delays from the Sheriff's Office. This is particularly so when service is attempted on parties abroad. There have been gaps of over one and half years or more with no response from the Sheriff's office. The Sheriff's office in turn says that it receives no response from the Postal Department. In an age of almost

instantaneous communication, this reliance on unreliable and outdated modes of service is without basis or justification.

6. As far as I am concerned, the Testamentary Department must accept any reasonable and practical mode of service including hand delivery by the Advocate's Office for local deliveries and by courier with proof of delivery as sufficient, and should not demand only service through the Sheriff's office. These modes of service, *i.e.*, hand delivery, registered post acknowledgement due, registered courier with acknowledgement, or courier with proof of delivery, may be used by the Advocates, in addition to every other mode of service. The Department should accept any of these additional modes of service. Should there be any uncertainty or ambiguity about the actual service, the Department or Advocate will always be at liberty to seek appropriate directions from the Court. The purpose, after all, is to make sure that the person to be served is actually served; *how* that person is served is entirely irrelevant. All that is needed is reliable data or proof of service having been effected. There is absolutely no warrant for the supposition that every mode of service except through the Sheriff's office is inherently unreliable or unacceptable to law. The experience is to the contrary: the most unreliable and delayed mode of service is through the Sheriff's office.

7. The consequence of this reliance on inefficient service and delivery systems is that parties and litigants are put to an incredible amount of trouble and hardship. Matters are delayed, often for years on end. Estates remain without proper administration for that entire period. It is time that the High Court and its administration adopted

modern efficiencies routinely in use in commerce and business as well.

8. A testamentary court may accept the alternative mode of service in its discretion, or it may insist on service through regular channels; but it may also accept service properly effected through alternative channels. Wherever service is effected, the citation must be accompanied by a true copy of the Petition with all its annexures.

9. Let the Department issue a practice note accordingly in regard to additional modes of service, emphasizing that proof of service is necessary and that these are additional modes, not in substitution.

(G. S. PATEL, J.)