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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 127 OF 2015**

IN

MISCELLANEOUS PETITION NO. 20 OF 2003

IN

TESTAMENTARY PETITION NO. 1014 OF 1999

Madhu Ramchand Lund

...Petitioner

Versus

C.B. Hinduja & Others

...Respondent

Mr. A.P. Wachasundar, *i/b Meghraj & Associates, for the Petitioner.*

Mr. Zal Andhyarujina, *with Mr. N. Amin, i/b N.N. Amin & Co., for Respondents Nos. 1, 2(a) to 2(c).*

Ms. Sunanda Kumbhat, *with Mr. Kunal Kumbhat, for Respondent No. 3.*

Ms. Priyanka Gharge, *i/b S.K. Srivastav & Co., for Respondent No. 4.*

CORAM: G.S. PATEL, J

DATED: 26th September 2016

PC:-

1. This is an application by the Petitioner who seeks revocation of probate granted in Testamentary Petition No. 1014 of 1999. Evidence was taken in the Miscellaneous Petition.

2. The parties on both sides of this Miscellaneous Petition are victims of procedural uncertainty, particularly in regard to the marking of documents and reference of matter to the Commissioners for recording evidence. In fact, in this matter some documents were marked before trial commenced, some were marked after and some have even purportedly been marked by the Commissioner. All of this will need to be rationalized at some stage. However, it seems that the Will in question was not actually marked as a document in evidence till the Respondent examined a witness.

3. What the Petitioner in Miscellaneous Petition now seeks is leave to lead evidence of a handwriting expert in relation to the Will. To disallow this application would, in my view, be unjust to both the sides. I do not think that it is appropriate to carry on with a situation where conceivably either or both sides are possibly victims of some procedure being not followed or being incorrectly adopted.

4. The revocation Petitioner will be entitled to lead the evidence of her own handwriting expert. That expert will be entitled to inspect the Will in the Registry and to take photographs either personally or by an authorized representative or an Agent. That inspection will be taken by prior appointment and with notice to the Advocates for the Respondent. Once that expert opinion is received, the expert will make an Affidavit of Evidence. The Affidavit of Evidence and the Opinion or Report will be placed before the Court for being marked as a document, after which the cross-examination of the Petitioner's handwriting expert will commence either in Court or before a Commissioner.

5. In order to maintain the balance, and since this is a somewhat extraordinary situation, I will grant leave to the Respondents as well to introduce the evidence of their own handwriting expert, if they so wish, on the same terms and conditions. That is a decision that the Respondents will be entitled to defer till after the cross-examination of the Petitioner's handwriting expert.

6. Mr. Andhyarujina states that Defendants Nos. 1 and 2(a) to 2(c) do not propose to lead any further evidence (reserving their right to introduce the opinion of a rival handwriting expert as noted earlier).

7. Liberty to the Petitioner to apply to have the matter placed for marking the expert's report after it is received and after the Affidavit of Evidence is made. List the matter for directions on 16th November 2016.

8. The Affidavit in Reply on behalf of Respondent No. 3 is taken on file.

9. The Chamber Summons is disposed in these terms with no order as to costs.

(G. S. PATEL, J.)