

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO.166 OF 2014
IN
TESTAMENTARY SUIT NO.23 OF 2003
IN
TESTAMENTARY PETITION NO.667 OF 2002

Mr. Anil Dinanath Tarkar ... Applicant
In the matter between

Mrs. Sulochana Dinanath Tarkar ...Plaintiff
Verus
Mr. Anil Dinanath Tarkar & Anr. ...Defendants

Mr. B.G. Saraf, for the Petitioner.
Mr. Farhan Khan, i/b Sathyanarayanan for the Respondent.

CORAM: G.S. PATEL, J
DATED: 7th June 2016

PC:-

1. This is the Defendants' Notice of Motion seeking, first, that they be permitted to lead evidence in the Suit. The second prayer seeks a recall of the Plaintiff's witnesses for further cross examination.

2. The antecedent circumstances are that on 23rd August 2010, the Defendants' previous Advocate made a statement to Court, one that was recorded in the Court's order of that date, that the Defendants would only cross-examine the Plaintiff's witnesses and desired to lead no evidence themselves. This is noted in paragraph 4 of that order.

3. Today the Defendants say that that statement made on their behalf was not to their knowledge or on their instructions. This is difficult to accept. Apart from anything else, the Defendants' previous Advocate did cross-examine the Plaintiff's witnesses. At the same time, I do not think it would be fair to entirely shut out the Defendants. However, the Defendants cannot be permitted to reopen the entire trial. The prayer to recall the Plaintiff's witness is rejected.

4. So far as the Defendants' own evidence is concerned, the Defendants may lead their evidence, but on the following terms. The Evidence Affidavits of both Defendants must be filed and served not later than 24th June 2016. There will be no extension of this deadline under any circumstances; in default, the Defendants' case will be deemed to be closed and the Suit will be set down for final hearing as previously directed by the order of 24th November 2014.

5. Upon those Affidavits being filed in time, the matter will be listed for directions on the supplementary board on 28th June 2016.

If necessary, irrespective of the caption, the matter will be taken up for marking the Defendants' documents as well.

6. I propose to complete the cross examination of both Defendants in Court in the shortest possible time so as not to further delay this matter.

7. I am making it clear at this stage that no application for adjournment during the trial from the Defendants under any circumstances will be entertained. Mr. Khan expressly accepts this on behalf of the Defendants.

8. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)