

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

**NOTICE OF MOTION (L) NO.18 OF 2017
WITH
CHAMBER SUMMONS NO.163 OF 2011
IN
TESTAMENTARY SUIT NO.9 OF 2008
IN
TESTAMENTARY PETITION NO.707 OF 2005**

Mrs. Sarayu AhujaApplicant/Plaintiff

Vs.

Maya Oberoi and Ors.Defendants

Mr. Sidharth Samantaray a/w. Mr. Sachin Kudalkar i/b. Madekar and Co.
for the applicant/plaintiff.

Mr. Nilesh Modi a/w. Ms. Asma Khan i/b. Rustamjiand Ginwala for the
defendants.

CORAM : K.R.SHRIRAM, J.

DATE : 25th JANUARY, 2017

P.C.:

NOTICE OF MOTION (L) NO.18 OF 2017

1 This notice of motion is for restoring the chamber summons
no.163 of 2011 that came to be dismissed vide an order dated 20th June,
2016 for default.

2 In the affidavit in support the explanation given is that the
earlier advocate gave no objection in March, 2016 but since the plaintiff
was busy with her pre-engagements she could not appoint another
advocate till November, 2016 and hence nobody appeared on 20th June,
2016.

3 In my view, though the explanation is not satisfactory and Mr. Modi, counsel for the defendants is justified in opposing this application, still in the interest of justice and since this is a testamentary suit, I am inclined to exercise my discretion in favour of the applicant and allow the notice of motion. At the same time, the applicant has to be put to terms.

4 The notice of motion is allowed and accordingly disposed in terms of prayer clauses – (a) and (b). The chamber summons no.163 of 2011 is restored to file.

5 The applicant to pay a sum of Rs.10,000/- as donation to Bombay High Court Law Library. This amount to be paid within two weeks from today.

6 Notwithstanding disposal of the notice of motion, the applicant to remove all office objections and get the notice of motion numbered within two weeks from today.

7 The chamber summons no.163 of 2011 be listed for hearing on 22nd February, 2017.

(K.R. SHRIRAM, J.)