

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**T. & I. J.****CHAMBER SUMMONS NO. 47 OF 2013****IN****SUIT NO. 9 OF 2011****IN****TESTAMENTARY PETITION NO. 947 OF 2010****ALONGWITH****CHAMBER SUMMONS NO. 32 OF 2015****IN****SUIT NO. 9 OF 2011****IN****TESTAMENTARY PETITION NO. 947 OF 2010****ALONGWITH****NOTICE OF MOTION NO. 9 OF 2013****IN****SUIT NO. 9 OF 2011****IN****TESTAMENTARY PETITION NO. 947 OF 2010****Haresh Karnani****..... Plaintiff****VERSUS****Prakash Shyam Masand & Anr.****..... Defendants**

Mr.Zubin Behramkamdin, a/w. Ms.Shivani Khanna, Mr.Saahil Bijiwala, i/b. FZB & Associates for the Plaintiff.

Mr.Prakash Shyam Masand for the Respondent in CHS/32/2015 and CST/47/2013 and for the Applicant in NMT/9/2013.

Ms.L.M.Jenkins, i/b. Mr.Haresh G.Ganatra for the Defendants.

CORAM : R.D. DHANUKA, J.**DATE : 17th JULY, 2017****P.C.**

Notice of Motion No. 9 of 2013 has been filed by the caveators *inter alia*

praying for dismissal of the testamentary suit and also for an order and directions against the plaintiff to disclose all the assets left behind the deceased at the time of his demise including fixed deposits, shares and the bank accounts etc. and for other reliefs.

2. Chamber Summons No.47 of 2013 and Chamber Summons No.32 of 2013 are filed by the applicant *inter alia* praying for condonation of delay in filing chamber summons and for seeking the amendment to the Schedule I to the Petition for Letters for Administration with the Will annexed and other constitutional amendments.

3. Learned counsel appearing for the applicant (original defendants) submits that the applicant has suppressed various assets of the deceased in the testamentary petition filed by him and thus on that ground itself the testamentary petition shall be dismissed. In the alternate, the defendants seeks disclosure of various assets which are not disclosed by the plaintiff in the testamentary suit.

4. Learned counsel appearing for the applicant in the Chamber Summons No. 32 of 2015 and Chamber Summons No. 47 of 2013 on the other hand invited my attention to the prayer clause (b) of the notice of motion filed by the defendants and also various averments made in the affidavit in support of these two chamber summons. He submits that the applicant was not aware of the position of law that being executor, he was required to disclose all the assets of the deceased testator in the testamentary petition. He was given an impression that he was required to mention only those assets of the said deceased where there was no joint holder or nominee in the said Schedule I. Due to such inadvertent error, only such assets were inadvertently disclosed in the Schedule I annexed to the testamentary

petition. When this objection was raised by the defendants in the Notice of Motion No.3 of 2013, the applicant checked the exact position with Ms.Sundri Masand being the widow of the said deceased and Ms.Sunita Mirchandani, being the daughter of the said deceased and filed this chamber summons to include those assets of the said deceased which were not inadvertently included in Schedule I annexed to the testamentary petition.

5. Learned counsel appearing for the applicant in chamber summons states that in any event this court cannot decide, the issue of title in respect of those assets which were inadvertently not included in the Schedule I to the testamentary petition filed by him.

6. A perusal of the averments made in the notice of motion filed by the defendants indicates that prayer for dismissal of the suit is made on the ground that there was no proper disclosure made by the applicant of all the assets in Schedule I to the testamentary petition. A perusal of the prayer (b) indicates that even the defendants seek disclosure of all the assets by the applicant.

7. In these circumstances and in view of the inadvertent error committed by the applicant as prayed in affidavit in paragraph (3) of the affidavit in support of the chamber summons, I am inclined to accept the explanation rendered by the applicant in the affidavit in support of the chamber summons. Be that as it may, since the testamentary court cannot decide the title in respect of the properties sought to be included in Schedule I of the testamentary petition, no prejudice would be caused to the defendants if an amendment is allowed. On the contrary if all the properties are disclosed in the Petition for Letters of Administration, it would be of some assistance to the defendants.

8. I, therefore, pass the following order :-

(a) The applicants in Chamber Summons No.47 of 2013 and Chamber Summons No.32 of 2015 are permitted to amend the Schedule I as per schedule appended to the chamber summons. Delay in filing chamber summons is condoned.

(b) The amendment to be carried out within four weeks from today. Amended copy of the testamentary suit shall be served upon the defendants' advocate simultaneously. It is made clear that no further extension would be granted. In view of the prayers granted in the chamber summons, no other relief can be granted in the notice of motion and the same is accordingly disposed of.

(c) The applicants in the chamber summons are also allowed to carry out consequential amendments as prayed.

(d) In the circumstances aforesaid, I do not propose to pass any order imposing any cost on the applicant. Application for cost is rejected. The aforesaid proceedings are disposed of in the aforesaid terms.

(R.D.DHANUKA, J.)