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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

CHAMBER SUMMONS NO.29 OF 2017
IN
TESTAMENTARY SUIT NO.198 OF 2016
IN
TESTAMENTARY PETITION NO.1853 OF 2016

Desmond A. D'Souza ...Applicant

IN THE MATTER BETWEEN :

Desmond A. D'Souza	...Plaintiff
V/s.	
Jude D'Souza	...Defendant
And	
Deniel Menezes & Ors.	...Respondents

Mr.D.R. Mishra for the Applicant / Original Petitioner.

Mr.S.D. Barne for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 24TH JULY, 2017.

P.C. :-

1. By this chamber summons, the applicant seeks an order and direction against the respondent no.1 to deposit the original Will dated 5th August, 2009 alleged to have been executed by the deceased with the office of the Prothonotary & Senior Master of this court and seeks issuance of the witness summons upon the

respondent nos.2 and 3, who are the attesting witnesses according to the applicant and are not co-operating with the applicant. The applicant also seeks condonation of delay in taking out this chamber summons.

2. Mr.Mishra, learned counsel appearing for the applicant states that the respondent no.1 has been served. He states that the respondent no.2 has been already served. The respondent no.3 has refused to accept service. Learned counsel for the applicant undertakes to file affidavit of service within one week from today.

3. Learned counsel for the Caveator opposes this chamber summons on the ground that there is 124 days delay in filing this chamber summons, which is not disclosed by the applicant in prayer clause (d) of the chamber summons. No affidavit in reply has been filed by the Caveator.

4. I have heard the learned counsel for the parties and have perused the averments made in support of the chamber summons. The applicant has filed this petition for Letters of Administration with the xerox copy of the Will annexed. It is the case of the applicant that the original Will dated 5th August, 2009 of the deceased is likely to be in the custody of and possession of Mr.Daniel Menezes, the respondent no.1 herein. It is submitted that the respondent nos.2 and 3 were the attesting witnesses to the Will dated 5th August, 2009, who

have not agreed to lead evidence in this matter and thus the witness summons be issued to those two attesting witnesses.

5. Insofar as the delay in filing this chamber summons is concerned, it is submitted by the learned counsel that the chamber summons could not be filed immediately and in the interest of justice the delay may be condoned.

6. The respondent nos.1 to 3 are absent though served. Since it is the case of the applicant that the original of the said alleged Will dated 5th August, 2009 is likely to be in the custody of the respondent no.1, the respondent no.1 be directed to deposit the original of the said Will dated 5th August, 2009, if the same is in his custody with the Prothonotary & Senior Master of this Court within two weeks from the date of communication of this order.

7. The respondent nos.2 and 3 who have not agreed to lead oral evidence as attesting witnesses are directed to file the affidavit in lieu of examination in chief before this Court within two weeks from the date of communication of this order.

8. For the reasons recorded in the affidavit in support of the chamber summons and after hearing the learned counsel for the parties, in my view, the delay of 124 days in filing this chamber summons is satisfactorily explained and is accordingly condoned.

9. After the alleged original Will is filed by the respondent

no.1 before this Court, the Caveator would be at liberty to seek inspection of such alleged original Will before the learned Prothonotary & Senior Master of this Court in the presence of the petitioner's advocate.

10. The respondent nos.2 and 3 are directed to remain present before this Court on 4th September, 2017 at 11:00 a.m.

11. The chamber summons is disposed of in aforesaid terms.

No order as to costs.

(R.D. DHANUKA, J.)