

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

**CHAMBER SUMMONS NO.24 OF 2017
IN
TESTAMENTARY SUIT NO.231 OF 2016
IN
TESTAMENTARY PETITION NO.232 OF 2016**

Sumedha Manaktala

... Deceased

And

Nitin Wadhwa

... Applicant /
Orig. Petitioner.

In the matter between

Nitin Wadhwa

... Plaintiff

Versus

Manju Subodh Manaktala

... Defendant

.....

Ms. Dhruti Chheda i/b. Yashpal Jain for Plaintiff / Applicant.
Mr. Siddharth Chabria a/w Mr. Shivkumr Iyer i/b. Ganesh
and Co. for Defendant/Caveator.

.....

CORAM : K.R. SHRIRAM, J.

DATE : 22nd MARCH 2017

P.C. :

1. Chamber Summons is taken out for leave to amend the Petition as per Schedule annexed to the Chamber Summons. The amendment sought is only correcting/providing substitute address of two of the legal heirs from what is stated in the Petition to be the address to what is mentioned in the Schedule and for leave to serve the citation afresh on these two legal heirs.

2. Admittedly, the two legal heirs namely, Pallavi Phakey and Manju Suboth Manaktala have both received citations. The citations which were to be served on Pallavi and Avani were served upon their mother Manju Manktala. Admittedly, Pallavi and Manju Manktala have already filed caveat.

3. Mr.Chabria for the defendants states that the Chamber Summons has been taken out by the constituted attorney of the executor plaintiff and such a Chamber Summons is not maintainable because the executor should have personally filed the affidavit in support of the Chamber Summons and he

could not do it through a constituted attorney. The objections made do not make any sense. Copy of the power of attorney is annexed to the Petition. The Petition itself is filed by the executor and since the executor is not in Mumbai, he has issued the power of attorney and instructed the constituted attorney to take out this Chamber Summons. If one has to wait for the Petitioner to return to Mumbai and take out this Chamber Summons progress of the matter will get delayed. Moreover, Pallavi and Avani have already entered their caveat and also filed an affidavit in support of the caveat opposing the grant of probate. In the circumstances, I am unable to accept the objections raised.

4. The Chamber Summons therefore, is allowed in terms of prayer Clause-(a). The amendment to be carried out and amended Petition to be served within two weeks from today.

(K.R.SHIRIRAM,J)