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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
MISCELLANEOUS PETITION NO. 1 OF 2017**

Juanita Punwaney

...Petitioner

Versus

Rajesh Punwaney

...Respondent

Dr Abhinav Chandrachud, *with Monisha Mane & Trisha Mehta, for
the Petitioner.*

CORAM: G.S. PATEL, J

DATED: 24th March 2017

PC:-

1. This is an Application under Section 78 of the Code of Civil Procedure, 1908 (“**CPC**”) read with Order XXVI Rules 19, 20 and 21 and Section 151.

2. There is a litigation in the Supreme Court of the State of New York between the present Respondent (the Plaintiff in that action, “**Rajesh**”) and the Petitioner before me (“**Juanita**”, one of the defendants to the New York lawsuit).

3. The dispute relates *inter alia* to the estate of the parties’ father, Bhagwan Punwaney. On 16th November 2016 Justice MJ Mendez issued Letters Rogatory seeking international assistance in the form of production of documents and testimony for use in the

New York litigation. Among the documents sought are some from the State Bank of India. The present Petition before me sets out the history. The Letters Rogatory request this Court to appoint a Commissioner to collect and obtain evidence. This includes documentary evidence and extends to recording testimony from named officials of the State Bank of India. The Petitioner before me, Juanita, says her New York attorneys will bear the costs, including the Commissioner's fees.

4. Such orders as are sought today have been passed frequently before. I see no reason to refuse the request. The Commissioner to be appointed must, of course, be a person not only with sufficient experience but given that there is a delegation of powers to summon witnesses must be specially placed to be able to do this. The Commissioner will also have to be authorized to administer oath and to examine witnesses on oath.

5. Dr Chandrachud for the Petitioner informs me that the Hon'ble Mr Justice AV Nirgude, former Judge of this Court is willing to accept the appointment.

6. The Petition is made absolute in terms of prayer clauses 12(i) to 12(vi), which read thus:

“(i) This Hon'ble Court may be pleased to appoint a Commissioner, (who can be a retired Judge), for collection/production of evidence, documents as well as for obtaining and recording the testimony from the said Bank

and the persons named or identified in the Letters of Rogatory; and

(ii) This Hon'ble Court may be pleased to pass an Order conferring the appointed Commissioner with the Power to call for production of documents from and/or record oral testimony of the individuals and the said Bank named in the Letters of Rogatory as well as obtain and record the testimony from them and/or any other duly authorized officer(s) or representative of the said Bank, having personal knowledge and/or in possession or control of the documents; and confer "Special Powers" on the Commissioner including the power to summon the person or persons named or identified in the Letters of Rogatory, including copies of emails, letters, reports etc; the power to accept copies of the said documents and evidences; the power to summon person or persons name or identified in the Letters of Rogatory, including the authorized representatives of the said Bank and to administer oath to them and to record their evidence including the individuals named or identified in the Letters of Rogatory; the power to allow the respective Indian and foreign Counsel of the Petitioner and the Respondent the opportunity to examine or cross-examine the aforesaid witnesses; the power to permit the respective foreign representatives of the Petitioner and the Respondent to attend and observe the examination of the said witnesses or persons named or identified in the Letters of Rogatory including the said Bank, and/or their authorized representatives; power to record the testimony of the said named persons or witnesses including the same Bank, and/or their authorized representatives in the manner stated in the Letters of Rogatory or in any other manner as may be necessary and

acceptable to the New York Supreme Court; the power to have the said evidence/testimony transcribed verbatim; and the power to provide both the documents and the recording along with the transcript to the Petitioner's and Respondents' representatives, their respective Indian counsels and to treat the documents and evidence as confidential; power to hold in camera proceedings with only the persons or representatives above named present in the room and the Commissioner shall also keep all the documents and records pertaining to this petition or matters arising therefrom including the evidence and documents collected by the Commissioner; and the Commissioner shall also have the power to send the evidence, documents collected and the testimony recorded to the Hon'ble Supreme Court of New York in a sealed cover and grant other consequential reliefs; and

(iii) This Hon'ble Court may be pleased to pass an Order to conduct further Proceedings before this Hon'ble Court as well as before the Local Commissioner *in camera* with only the Petitioner's and Respondents' representatives including their respective Indian counsel and foreign attorneys being present; and

(iv) This Hon'ble Court may be pleased to pass an Order directing the Prothonotary & Senior Master and the appointed Commissioner to keep all the documents and records pertaining to this petition or the matter relating to or arising therefrom including the evidence collected by the Commissioner in a sealed cover and allow access to the said documents only to the parties to the present proceedings; and

(v) allow the Petitioner to file and recorded evidence as described in the Letters of Rogatory before this Hon'ble Court in a sealed cover as and when required which is a 'Confidential' document and is so treated by the New York Supreme Court in the proceedings pending before it;

(vi) This Hon'ble Court may be pleased to pass an Order directing the Commissioner to send the evidence/documents collected and the testimony recorded to the Hon'ble Supreme Court of the State of New York in a sealed cover in the manner specified in the Letters of Rogatory; and"

7. The costs of the Commission (including the Commissioner's fees) will be met entirely by the Petitioner's US Attorneys. The Petitioner and her US Attorneys will also make available to the Justice Nirgude such administrative and secretarial assistance as he needs. This includes the costs of hiring of audio visual equipment, purchasing storage media, stenographic services, and so on. I would suggest the testimony be video recorded and transcribed as well, so that both can later be transmitted to the US Court.

8. I request Justice Nirgude to seal the entire evidence gathered. Thereafter the Petitioner's Attorneys will make necessary application to Court for directions for transferring this material to the US Court.

9. Regard being had to these arrangements, I propose to keep the Petition pending and to list it for further directions on 9th June 2017.

10. The original Letters Rogatory in a sealed envelope are tendered. The envelope is opened. It will be retained by the Prothonotary & Senior Master.

(G. S. PATEL, J.)