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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) No. 287 OF 2015
IN
MISCELLANEOUS PETITION No. 62 OF 2014

Sunanda Prabhakar Naik @ P. P. Naik ... Appellant
(Original Petitioner)

Vs.

Madhukar Budhaji Koli ... Respondent

None for the Appellant.

Mr. Nitin D. Vhatkar a/w Arun D. Nagarjun, for the Respondent.

CORAM : V. M. KANADE, &
C. V. BHADANG, JJ.

DATE : MARCH 27, 2017

PC.

1. None appears on behalf of the Appellant. Heard the learned counsel appearing on behalf of the Respondent. The Appellant is aggrieved by judgment order dated 14th July, 2014. It is submitted before the learned Single Judge that there is no service of citation on the petitioner in terms of Rule 399 of the Bombay High Court (Original Side) Rules, and therefore, the probate which was granted without effecting personal service of citation is liable to be revoked.

2. We have perused the order passed by the learned Single Judge. The learned Single Judge has observed that three attempts were made to effect service of citation on the petitioner personally. Liberty was granted to the respondent to affix true copies of the citation one on the High Court notice board and another on the Collector's notice board. An affidavit of service was filed by the Respondent. Thereafter the Prothonotary and Senior Master was directed to serve citation on the petitioner (Appellant herein) by publishing it in the newspaper as per Rule 400.

3. In our view, the learned Single Judge has rightly observed that combined reading of Rule 399 with 400 indicates that citation has to be served personally when possible and if it is not possible to serve citation personally, then it can be served by publishing the same in the newspaper. The learned Single Judge, therefore, has rightly come to a conclusion that the citation was served, however, the petitioner did not choose to file caveat. We do not see any reason to interfere with the well reasoned order passed by the learned Single Judge. Hence, appeal is dismissed.

Sd/-
[C. V. BHADANG, J.]

Sd/-
[V. M. KANADE, J.]