

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

NOTICE OF MOTION NO.177 OF 2017

IN

CAVEAT (L) NO.443 OF 2016

IN

PETITION NO.403 OF 2015

(Vinod Kumari Dhawan and others Vs.Yashpal Dhawan)

Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders	Court's or Judge's orders
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Mr. Subhash G. Bane for Applicants.
Ms Eventa A. Gonsalves a/w. Mr. Reyden L. Gonsalves for Respondent.

CORAM : R. G. KETKAR, J.

DATE : 19TH SEPTEMBER, 2017

P.C.:

Heard Mr. Bane, learned Counsel for applicants and Mr. Gonsalves, learned Counsel for respondent.

2. By this Motion, applicants have prayed for setting aside the order dated 12.04.2017 passed by Additional Registrar (O.S.) / Additional Prothonotary and Senior Master thereby rejecting Caveat (L) No.443 of 2016 for not removing office objections.

3. In support of this Motion, Mr. Bane submitted that office has raised two objections namely, (i) date of service

of citation and (ii) affidavit in support of Caveat is not filed. He submitted that citation was served on the applicants on 26.11.2016 and Caveat was filed on 06.12.2016. He submitted that applicant No.2 Pramod Kumari Dhawan is a senior citizen and there was communication gap between her and the Advocate as regards date of service of citation on her. He submitted that for the reasons set out in paragraphs 5 and 6 of the rejoinder dated 12.09.2017 and having regard to the fact that affidavit in support of the Caveat is ready and he is ready and willing to file the same during the course of the day, reliefs prayed in the Notice of Motion may be granted.

4. On the other hand, Ms Gonsalves strenuously contended that on one hand applicants have give reasons for not removing office objections in paragraphs 5 and 6 of the rejoinder for the first time and on the other, they are religiously attending proceedings in the City Civil Court. In other words, she submitted that no sufficient ground is made out for granting the reliefs.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, one of the office objections raised was not disclosing the date on which the citation was served. Mr. Bane stated that the

citation was served on 26.11.2016. As far as the other office objection about not filing affidavit in support of the Caveat is concerned, Mr. Bane submitted that he has submitted affidavits in support of the Caveat filed by applicants No.1 and 2 and affidavit in support of Caveatrix No.3 will be filed and served during this week.

6. In view thereof and for the reasons made out in affidavit in support of Notice of Motion and affidavit in rejoinder, I am satisfied that applicants have made out sufficient cause for allowing the Motion. Hence, Motion is made absolute in terms of prayer clauses (a), (b) and (c). Applicants shall serve affidavit in support of the Caveat filed by grand-daughter of the deceased, Shekha Bharat Arora during the course of this week. Order accordingly.

(R. G. KETKAR, J.)

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