

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

CHAMBER SUMMONS NO.108 OF 2017
IN
TESTAMENTARY SUIT NO.5 OF 2017

Bharat Rasiklal Ashra	...	Applicant / Org. Def.
In the matter of		
Gautam Rasiklal Ashra	...	Plaintiff
Vs.		
Bharat Rasiklal Ashra	...	Defendant

Mr. Sumeet Moholkar for Applicant.
Ms Priyanka Kothari with Mr. Ayaz Bilawala and Ms Neha Bhatt i/b. Bilawala and Co. for Plaintiff.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 9, 2017

P.C. :

Heard Mr. Moholkar, learned Counsel for applicant and Ms Kothari, learned Counsel for plaintiff.

2. By this Chamber Summons, applicant / defendant has prayed for allowing the defendant to file the additional written statement in Testamentary Suit No.5 of 2017 after condoning the delay in taking out the Chamber Summons.

3. In support of this Chamber Summons, Mr. Moholkar invited my attention to paragraphs 5.3 and 5.4 of the affidavit in support to contend that defendant has filed a Caveat dated 24.10.2016 along with short affidavit objecting to the grant of Probate of the purported Will on the grounds that the same is fabricated and not a genuine document. The affidavit does not set out in details the specific objections to the purported Will. The applicant wishes to file additional written statement setting out in detail specific objections to the genuineness of the

purported Will, and therefore, has taken out present Chamber Summons seeking leave of the Court to permit him to file additional written statement. He relied upon Rule 403 of the High Court (Original Side) Rules (for short 'Rules'), which lays down that the procedure in testamentary suits shall, as nearly as may be, be according to the procedure applicable to Civil Suits on the Original Side of the Court. He has relied upon the decision of this Court in ***Sarla Kapur Vs. Sanjay Suresh Kapur*, AIR 2009 Bombay 117.**

4. On the other hand, Ms Kothari submitted that defendant had filed short affidavit in the Caveat without giving any details as to why Probate should not be granted. She submitted that save and except the contention as regards genuineness of the Will, defendant did not raise any objection. She, therefore, submitted that no case is made out for granting any relief.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Rule 403 of the Rules reads thus,

“403. Procedure on affidavit in support of caveat being filed –
 (i) Upon the affidavit in support of the caveat being filed, the petition shall be numbered as suit in which the petitioner shall be the plaintiff and the caveator shall be defendant. Notice of the fact that the petition has been renumbered as a suit shall be given by the Prothonotary and Senior Master to the petitioner or his Advocate on record. The notice shall be in Form No.117. The petition shall be treated as the plaint and the affidavit in support of the caveat shall be treated as the written statement of the caveator. The procedure in such suit shall, as nearly as may be, be according to the procedure applicable to civil suits on the Original Side of the Court.

ii) Where there are two or more caveators and each of them has filed an affidavit in support of his caveat, separate suit numbers shall not be given to the petition, but all the caveators shall become party defendants in one suit.”

6. Order VIII, Rule 9 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') reads thus,

9. Subsequent Pleadings: No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the court and upon such terms as the court thinks fit, but the court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

7. It is a common ground between the parties that the defendant has raised only one objection as regards the fabrication of the Will on the ground that it is not a genuine document. The applicant wishes to set out in detail specific objections to the genuineness of the Will. In view thereof as also having regard to the provisions of Rule 403 read with Order VIII, Rule 9 of C.P.C., applicant has made out a case for allowing the Chamber Summons. Hence, Chamber Summons is made absolute in terms of prayer clauses (a) and (b) with no order as to costs.

(R. G. KETKAR, J.)

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