

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

**CHAMBER SUMMONS NO.108 OF 2016
IN
TESTAMENTARY PETITION NO.170 OF 2016**

Ashok @ Ashwin Laxmishankar Pandya & Anr.Applicants/Petitioners

Vs.

Mrs. Minaxi Jayant Shah & Ors.Respondents

Mr. A. Dasgupta a/w. Mr. S. Shah i/b. M/s. Jhangiani, Narula and Associates for the applicants/petitioners.

Ms. I. Memon i/b. Shoaib I. Memon for the respondent nos.1 and 2/Ceaveators.

CORAM : K.R.SHRIRAM, J.

DATE : 25th JANUARY, 2017

P.C.:

1 At the outset, Mr. Dasgupta, counsel appearing for the applicants seeks leave to amend the cause title of the chamber summons.

Leave granted. Amendment to be carried out forthwith.

2 This chamber summons is for leave to replace the Schedule of assets annexed to the petition with the Schedule annexed to the chamber summons. The reason why the applicants are seeking such a relief is because items 3,6 and 7 in the replacement Schedule were not mentioned in the list of assets earlier and these items have come to the knowledge of the petitioners subsequent to filing of the petition.

3 Item 3 is relating to Term Deposit Account, item 6 is Savings Bank Account and item 7 is another Term Deposit Account. Item 3 and item 6, the petitioners state has come to their knowledge from the affidavits in support filed by the Caveators. The same can be found in the affidavits at Exhibit 2 and Exhibit 3 annexed to the chamber summons.

Ms. Memon, counsel appearing for the respondent nos.1 and 2 states that item 6 is actually a Savings Bank Account which was in the joint name of the deceased and respondent no.2 and it was operatable by either or survivor. At the same time, it should be noted that in the affidavit it is stated that the said account was opened by the deceased with the respondent no.2. Ms. Memon further states that the entire amount from that account has been withdrawn by respondent no.2.

Mr. Dasgupta pointed out the portions in the affidavits in support of the Caveats filed by the respondent nos.1 and 2 to justify why these entries at items 3 and 6 should be added.

4 So far as item 7 is concerned, viz., Term Deposit Account No.6195320423, Mr. Dasgupta submitted that pursuant to the order dated 6th May, 2016 in Misc. Petition lodging No.980 of 2016 taken out by the petitioners, which is now numbered as Misc. Petition No.58 of 2016, this court had directed Indian Bank to disclose on oath the status of Fixed Deposits and Savings Account of the deceased. Pursuant to the said order,

Indian Bank has filed an affidavit dated 21st July, 2016 in which it is mentioned that as per their records the Term Deposit Account No. 6195320423 is also found in the name of Charusheela Sattawala (the deceased) and as on 29th April, 2016 the balance is Rs.5,56,896/-. Mr. Dasgupta states that therefore, this account also should form part of the list of assets.

5 Have heard the counsel and also considered the affidavits in support together with affidavits, copies whereof are annexe thereto, affidavit in reply and affidavit filed by the Indian Bank in Misc. Petition lodging No.980 of 2016. In my view, the petitioners are justified in asking for substitution of the Schedule of assets annexed at Exhibit 'C' to the petition with the Schedule annexed to the chamber summons.

6 In the circumstances, the chamber summons is allowed and accordingly disposed in terms of prayer clause – (a). Amendment to be carried out and copy of the amended petition to be served within one week from today.

(K.R. SHRIRAM, J.)