

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

NOTICE OF MOTION NO.123 OF 2015
IN
TESTAMENTARY SUIT NO.32 OF 2006
IN
TESTAMENTARY PETITION NO.114 OF 2006

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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Ms Rita Bhatia for Applicant / Defendant.
Mr. Sunil R. Rawal for Opponent / Plaintiff.

CORAM : R. G. KETKAR, J.
DATE : 08TH AUGUST, 2017

P.C.:

Heard Ms Bhatia, learned Counsel for applicant / defendant and Mr. Rawal, learned Counsel for opponent / plaintiff.

2. By this Motion, petitioner has prayed for recalling the order dated 17.08.2015 by which defendant's case is closed. In the order dated 17.08.2015, this Court noted that on 14.07.2015, defendant was given time till 10.08.2015 for filing - (i) his affidavit of evidence, (ii) affidavit of documents, and (iii) compilation of documents. Defendant did nothing and therefore, his evidence was closed. Ms Bhatia invited my attention to paragraphs 3 to 5 of the affidavit in support of the Motion

and further submitted that defendant has filed his affidavit of evidence, affidavit of documents and compilation of documents and served copy on the other side. She, therefore, submitted that the order dated 17.08.2015 may be recalled.

3. On the other hand, Mr. Rawal submitted that no sufficient cause is made out by the defendant. The explanation given by the defendant is not acceptable. Though the order was passed on 17.08.2015, Motion is not taken out immediately and is taken out only on 09.09.2015. He, therefore, submitted that no case is made out for granting any relief.

4. 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, defendant's evidence was closed for not filing his affidavit of evidence, affidavit of documents and compilation of documents. For the reasons stated in paragraphs 3 to 5 as also having regard to the fact that the defendant has served the documents on the other side, the case is made out for granting the relief claimed in the Motion. Hence, Motion is allowed in terms of prayer clauses (a), (b) and (c) with no order as to costs.

(R. G. KETKAR, J.)