

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

**CHAMBER SUMMONS NO.26 OF 2017
IN
MISCELLANEOUS PETITION NO.33 OF 2017
IN
TESTAMENTARY PETITION NO.294 OF 2012**

Pooja Deepak Patil	..	Applicant
In the matter between		
Pooja Deepak Patil	..	Petitioner
Vs.		
Savita Vasant Rao Patil & Ors.	..	Respondents

Dr.Birendra Saraf a/w Nafisa Khadeparkar, Trisha Mehta, Raksha Thakkar i/by M/s.ALMT Legal for the applicant/petitioner.
Ms.Purnima Bhatia for the respondent no.1.`

CORAM : R.D. DHANUKA, J.
DATE : 11th July 2017

P.C. :

. By this chamber summons, the applicant seeks amendment to the Miscellaneous Petition No.33 of 2017 filed by the applicant inter alia praying for revocation of grant of probate passed by this Court in favour of the respondent no.1 in Testamentary Petition No.294 of 2012.

2. Dr.Saraf, learned counsel appearing for the applicant invited my attention to the order dated 7th August 2013 passed by this Court dispensing with the office objection raised by the office of this Court on 9th November 2012 for obtaining consent of the applicant.

3. It is submitted by the learned counsel that the applicant is not mentally retarded person. In his alternate submission, he submits that even if this Court comes to a conclusion that the applicant is mentally retarded person, *guardian ad-litem* was required to be appointed by this Court to protect the interest of the applicant. He invited my attention to the Schedule 'A' appended to the chamber summons and submits that by this chamber summons, the applicant seeks to apply for recall of the said order dated 7th August 2013 passed by this Court on various grounds.

4. It is submitted that in the affidavit-in-reply to the Miscellaneous Petition No.33 of 2017, the respondent no.1 herein has raised certain issues which are required to be clarified by placing the material facts on record which the applicant seeks to produce by seeking amendment to the miscellaneous petition. He seeks to add two interim prayers so as to protect the estate of the deceased father of the applicant. He submits that appropriate authority has now certified that the applicant is not mentally retarded and thus her mother or anybody else cannot be appointed as *guardian ad-litem*. He submits that the applicant herself has filed this chamber summons inter alia praying for amendment to the miscellaneous petition.

5. Ms.Bhatia, learned counsel for the respondent no.1, on the other hand, opposes this chamber summons on the ground that mother of the applicant has filed number of proceedings initially for declaring that the applicant is the mentally retarded person and thereafter contrary thereto that she is not mentally retarded. It is submitted that no prayer for recall of the order dated 7th August 2013 passed by the learned Single

Judge of this Court can be considered by another learned Single Judge of this Court and thus amendment shall not be permitted by this Court. In so far as interim reliefs sought to be included in the miscellaneous petition is concerned, it is submitted that those prayers could have been added by the applicant initially in the miscellaneous petition and thus no amendment shall be permitted.

6. Lastly, it is submitted that if this Court comes to a conclusion that the amendment is required to be allowed, all contentions on merits of the matter raised by her client in the affidavit-in-reply be kept open.

7. In so far as the submission of the learned counsel for the respondent no.1 that the order passed by the learned Single Judge cannot be recalled by another learned Single Judge of this Court is concerned, a perusal of the chamber summons clearly indicates that the applicant has not applied for setting aside the order passed by this Court on 7th August 2013 as if this proceeding is in appeal but applied for recall of the said order passed by this Court on the ground that the said order was an ex parte order and on the other grounds. In my view, there is no merit in the submission of the learned counsel for the respondent no.1.

8. In so far as the submission of the learned counsel for the respondent no.1 that the interim reliefs could have been applied for by the applicant simultaneously in the miscellaneous petition is concerned, I have perused the affidavit-in-support of the chamber summons. I am satisfied that the applicant has made out a case for amendment to the

miscellaneous petition so as to seek the interim reliefs as sought to be included in the miscellaneous petition. I do not propose to go into the issue whether the certificate granted by the appropriate authority to the applicant that she is not mentally retarded or not at this stage.

9. In my view, the applicant has made out a case for grant of amendment to the miscellaneous petition. All contentions raised by the respondent no.1 on merits of the matter would be considered at the time of hearing of the miscellaneous petition.

10. I therefore pass the following order :-

- (i) Chamber summons is made absolute in terms of prayer clause (a). Amendment to be carried out within two weeks from today. Amended copy of the miscellaneous petition shall be served upon the respondent's advocate simultaneously within one week from the date of carrying out the amendment.
- (ii) Respondents would be at liberty to file affidavit-in-reply if they so desire, within two weeks from the date of service of the amended copy of the miscellaneous petition.
- (iii) Chamber summons is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.