

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 288 OF 2017
IN
TESTAMENTARY SUIT NO. 132 OF 2016
IN
TESTAMENTARY PETITION NO. 552 OF 2014**

Arun Narendrakumar Khambholja ...Plaintiff
Versus
Shobha Narendra Khambholja ...Defendant

Mr Akshay A Sawant, i/b VS Kapse, for the Plaintiff.
Mr Joel D'Souza, for the Defendant/Applicant.

CORAM: G.S. PATEL, J
DATED: 23rd January 2018

PC:-

1. The Notice of Motion is not maintainable in view of the decisions of this Court in (1) *Rupali Mehta v Tina Narinder Sain Mehta*;¹ (2) *Ramchandra Ganpatrao Hande alias Handege v Vithalrao Hande & Ors*;² (3) *Manek Dara Sukhadwalla v Shernaz Faroukh*

1 AIR 2007 Bom 62 : 2006 (6) ALL MR 48 : 2006 (6) Bom CR 778 : 2006 (6) Mh LJ 786.

2 AIR 2011 Bom 136 : 2011 (4) ALL MR 189 : 2011 (4) Bom CR 326 : 2011 (113) Bom LR 1302 : 2011 (4) Mh LJ 50.

Lawyer (DB);³ (4) *Shernaz Faroukh Lawyer & Anr v Manek Dara Sukhadwalla and Anr*;⁴ and (5) *Lydia Agnes Rodriques née D'Cunha & Ors v Joseph Anthony D'Cunha & Ors*;⁵ among others.

2. The Notice of Motion is dismissed as withdrawn. No costs.

3. It only remains to note that the Petition itself cannot proceed in the present form. It was originally brought for probate by Narendrakumar Khambolja, the father of Arunkumar and Shobha. Narendrakumar was the Executor appointed under the Will made by his mother Shantabai Ramanlal Khambolja. Narendrakumar having passed away, his son cannot seek probate. It is for him to make the necessary amendment and to seek either in the amendment or by way of fresh Petition seeking Letters of Administration with Will annexed.

4. Having regard to the fact that this Petition is pending, he is required to take necessary steps within a period of six weeks from today, i.e., on or before 23rd March 2018 failing which this Suit and the Petition will stand dismissed without further reference to the Court on that date.

(G. S. PATEL, J)

3 MANU/MH/1252/2014.

4 2015 (2) ALL MR 233 : 2014 (2) Bom CR 591 : 2015 (2) MhLJ 917.

5 2014 (2) ALLMR 873 : 2014 (1) Bom CR 811 : 2014 (3) Mh LJ 508.