

Arun

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

NOTICE OF MOTION NO. 149 OF 2018

IN

MISCELLANEOUS PETITION NO. 87 OF 2011

IN

TESTAMENTARY PETITION NO. 222 OF 1993

Shanta Mirchandani & Anr

...Applicants/
Petitioners

Versus

Rajendra Kumar Shahani

...Respondent

Mr VV Kanade, i/b Mr Mangesh Nalawade, for the Petitioners.
Mr RS Jaisinghani, i/b Ms Jacintha D'Silva, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 12th October 2018

PC:-

1. The Affidavit in Reply dated 11th October 2018 is permitted to be filed in the Registry in the course of the day. The papers in Testamentary Petition No. 411 of 1970 will be kept along with this Miscellaneous Petition.

2. The present Notice of Motion No. 149 of 2018 is by the Revocation Petitioners seeking leave to lead the evidence in rebuttal of a handwriting expert or forensic expert on the question of the authenticity of the signature of the deceased, Ruki Mirchandani, on

the Will that received Probate in Testamentary Petition No. 222 of 1993.

3. While I will allow the Notice of Motion in terms of prayer clause (a), I must have some regard to Mr Jaisinghani's submission on behalf of the Respondent that the deceased Ruki Mirchandani's estate has now been in litigation in one form or another for 18 years. In the Miscellaneous Petition itself both sides have lead evidence. Indeed, his submission is that to save time, the Court itself should appoint an independent expert. I am not inclined to accept that submission at this stage but I will certainly require the Revocation Petitioners to adhere to a strict time frame to put in the report of their forensic expert. The expert opinion's report along with his Evidence Affidavit must be filed in the Registry and served on Ms D'Silva for the Respondent on or before 30th November 2018. There will be no extension of time under any circumstances. If the report is not filed and served by that date, the Petitioners' case will be deemed to have been finally closed without rebuttal evidence, and the Miscellaneous Petition will then be set down for hearing and final disposal.

4. If the report is filed and served on schedule, there will then be the question of marking the report as a document in evidence. I am making it clear that no annexures to the report will be marked as part of the report or as exhibits in evidence merely because they are appended to that report. Those annexures will have to be proved in accordance with law. The only additional document that I will consider marking as an exhibit is a certified copy of the Testamentary Petition No. 411 of 1970, since that is a record of the

Court. The disputed Will in question has already been marked in evidence and therefore need not be marked again. Any other documents such as photographs etc that the forensic expert produces, annexes or relies on will have to be properly proved.

5. For the purposes of the report, the Petitioners' handwriting expert will be at liberty to inspect and photograph the original Will in the Registry of the Court by prior appointment and after notice to Ms D'Silva. The expert will also be entitled to inspect the original Testamentary Petition No. 411 of 1970, certified copies of which have been given to the Advocates for both sides.

6. List the matter for marking the expert's report and documents on 7th December 2018.

7. A further clarification is also necessary. Having regard to the fact that the Revocation Petitioners are being permitted to bring in the evidence of a forensic expert as evidence in rebuttal, it follows as a matter of course that it will be open to the Respondent to lead further evidence of his own forensic expert after cross-examination of the Petitioners' expert is completed, if the Respondent so desires. He will not be required to file a separate Motion for leave to do so.

8. The Notice of Motion is disposed of in these terms.

(G. S. PATEL, J)