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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 170 OF 2018
IN
TESTAMENTARY PETITION NO. 1496 OF 2013**

Brijesh Bharat Vissanji	...Petitioner
<i>And</i>	
Bharat Ratnasey Karsondar Vissanji	...Deceased

Ms Sonal, *i/b M/s. Thakore Jarimala & Associates, for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 19th September 2018

PC:-

1. The Petitioner seeks a probate. It is entirely uncontested. The trouble — though not a dispute — that the Petitioner has is not with any heir, but, strangely enough, with the attesting witnesses.

2. The Will in question was executed on 5th November 2006 overseas in the United States. Both attesting witnesses also live there. They had initially filed Affidavits deposing to the execution and attestation of that Will. These Affidavits did not conform to our rules and procedures. They were not ‘in the prescribed form’, if there even be such a thing for an affidavit.

3. I passed an order on 5th August 2016 noting that there were some pages missing in the Affidavits then filed. On 1st August 2017, RD Dhanuka J directed the issuance of witness summons overseas. While this is correct, I do not see how we can compel their attendance without a great deal of time and expense.

4. Ms Sonal today points to the one-page affidavit confirmation from each of the two attesting witnesses at pages 17 and 18 of the Affidavit in Support of the present Notice of Motion. This makes it clear, as she says, that both attesting witnesses confirm execution and attestation of the Will on 5th November 2006 in the United States.

5. What is the difficulty that needs to be explained and of which so much is being made? The original Will — Ms Sonal has a certified copy and a photocopy is also annexed to the Petition itself — shows that there was on the last page a handwritten date plus the handwritten addresses of the attesting witnesses. But, more importantly, in paragraph 3, a portion has apparently been scored out, although it is signed (not just initialled) by the Testator in the margin. The portion scored out is, on its own, totally irrelevant. It speaks of a ‘more particular description below’, of unnamed charities, and a donation. This entire space is blank — the amount and the charities are all unknown.

6. Given that there is in the photocopy the signature of the deceased, and that there is no dispute about that signature; and also the fact that this disposition, if it can even be called that, is not to

any individual or heir, I see no reason to put this Petitioner to any further trouble only on the ground that the Evidence Affidavits of the attesting witnesses are not exactly in the prescribed form. Our forms are meant as guidelines and cannot be construed this rigidly.

7. The present Affidavits of the two attesting witnesses will have to suffice for this purpose. I intend to allow the present Notice of Motion but it is not necessary to pass an order in terms of prayer clauses (a) and (b). It is sufficient if the previous orders are substituted by the following:

- (a) The Notice of Motion is made absolute in terms of prayer clause (c); and in addition and by way of abundant caution,
- (b) the Petitioner will file Affidavit of Evidence of Mrs Rekha Vissanji and Mr Rasesh Vissanji in lieu of the Affidavit of one of the attesting witness.

8. The Notice of Motion is disposed of in these terms. No costs.

(G. S. PATEL, J)