

Shephali

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

REVIEW PETITION NO. 3 OF 2016

IN

NOTICE OF MOTION NO. 70 OF 2016

AND

NOTICE OF MOTION (L) NO. 193 OF 2016

IN

TESTAMENTARY SUIT NO. 40 OF 1995

IN

TESTAMENTARY PETITION NO. 639 OF 1994

Khairunnisa A Karim Shaikh

...Petitioner

Versus

Sunanda N Dubal & Ors

... Respondents

Mr Omar K Shaikh, for the Petitioner.

CORAM: G.S. PATEL, J

DATED: 21st November 2018

PC:-

1. On the limited grounds that (i) the Revocation Petitioner was not before the Court on 22nd July 2016, the date of the order under Review, and (ii) the Revocation Petitioner accepts that there was a

defect or error in the manner of framing the reliefs in the Notices of Motion; and only so that a party in a testamentary dispute should not be prejudiced or put to hardship, I will exercise my powers of review by admitting and allowing this Review Petition. It is made absolute in terms of prayer clause (a). It is also pointed out by Mr Shaikh that the proposed amendment was for impleadment of the heirs of the executors and not the heirs of the deceased and this led to confusion on the part of the applicants. Strictly speaking, the appropriate course may be to dismiss the Review Petition and grant liberty to file a fresh, correctly drawn Notice of Motion, but that will only delay matters.

2. Accordingly, the order of 22nd July 2016 in Notice of Motion No. 70 of 2016 with Notice of Motion (L) No. 193 of 2016 in Testamentary Petition No. 639 of 1994 is recalled. Both Notices of Motion are restored to file and will be listed at the earliest convenient date before the appropriate bench.

3. The Review Petition is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)