

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 11 OF 2018
IN
TESTAMENTARY SUIT NO. 10 OF 2006
IN
TESTAMENTARY PETITION NO. 950 OF 2005**

Dollyben Nautamal Udani	...Plaintiff
<i>Versus</i>	
Dhairyabala Arvind Halakia	...Defendant

Mr Vishal Talsania, *with Ms Dolly Kkotwani, I/b Vigil Juris, for the Plaintiff.*
Mr MS Bhandari, *I/b Pranjali Bhandari, for Defendant/Applicant.*

CORAM: G.S. PATEL, J
DATED: 17th July 2018

PC:-

1. Not on board. By consent, taken on board.

2. The Chamber Summons seeks to delete portions of paragraphs 4 and 5 of the Evidence Affidavit of PW3. For some extremely peculiar reason, there is an Affidavit in Reply by the witness himself. I will disregard this totally. PW3 is a witness, not a

party to the proceedings. He has no business filing an Affidavit in Reply.

3. I have considered paragraphs 4 and 5 of the Evidence Affidavit.

4. In my view, in the first portion of paragraph 4 of the Evidence Affidavit, the witness has deposed to what he was personally told. He can certainly depose to this fact. The evidentiary value of that deposition is a matter for another day. The last two sentences of paragraph 4 are ones in respect of which the witness has not yet made any deposition. He does not say how he came to learn this. He may do so at any time before his cross-examination begins. If he does not, it will be open to the Plaintiff to submit that the last two sentences should be ignored entirely as not being to the witness's personal knowledge.

5. Paragraph 5 of the Evidence Affidavit is a matter that the witness deposes was communicated to him. This cannot be, therefore, be excluded from the Evidence Affidavit. The witness is certainly entitled to depose to what he heard, though his evidence is not proof of the truth of what he heard.

6. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)