

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***TESTAMENTARY & INTESTATE JURISDICTION*****NOTICE OF MOTION NO. 162 OF 2017****IN****TESTAMENTARY SUIT NO. 57 OF 2008****IN****TESTAMENTARY PETITION NO. 569 OF 2008****Vidhya Dayanand Pai****..... Applicant****IN THE MATTER BETWEEN****Vidhya Dayanand Pai****..... Plaintiff****VERSUS****Vilas Naik & Ors.****..... Defendants**

Mr.Laxman Venkatesan for the Applicant in NMT.

Mr.Yogendra Kanchan for the Respondent nos. 1 and 2.

CORAM : R.D. DHANUKA, J.**DATE : 13th FEBRUARY, 2019****P.C.**

Mr.Venkatesan, learned counsel for the applicant (original petitioner) states that the caveators have already filed affidavit of evidence dated 10th March,2016, a copy whereof was duly served upon the applicant's advocate. He seeks inspection of various documents based on the deposition made in the affidavit of evidence. He further states that all the assets of the deceased are not disclosed by the respondents. He further states that there are some more assets which are to the knowledge of the defendants which are not disclosed by the defendants to the applicant. If those assets are disclosed, the applicant is ready and willing to carry out amendment in the testamentary suit

and would include those assets forming part of the estates of the deceased testator.

2. Mr. Kanchan, learned counsel appearing for the defendants states that the earlier affidavit in lieu of examination in chief of the defendants as referred by the learned counsel for the applicant could not be filed in view of the fact that the earlier advocate representing the defendants has expired. He submits that defendants would file a fresh affidavit in lieu of examination in chief along with compilation of documents within four weeks from today. He further states that all the assets which are not disclosed by the applicant in the testamentary petition and which are if to the knowledge of the defendants, the same would be disclosed within two weeks from today and would serve a copy thereof upon the applicant's advocate simultaneously. The statements made by the learned counsel is accepted as and by way of undertaking to this court. The applicant in that event would be at liberty to seek amendment to the testamentary suit.

3. As and by way of last indulgence, the defendants are granted four weeks time to file affidavit in lieu of examination in chief and affidavit of the first witness along with compilation of the documents. The defendants shall also file a list of witnesses simultaneously. It is made clear that no further extension of time would be granted. If affidavit in lieu of examination in chief along with compilation of documents is not filed within the time prescribed, the evidence of the defendants would be treated as closed. If affidavit in lieu of examination in chief of the first witness along with compilation of

documents along with affidavit of documents and list of witnesses is filed within the time prescribed, the applicant is directed to file statement of admission and denial in respect of such documents within two weeks from the date of service of the aforesaid affidavits and compilation of the documents with a copy thereof to be served upon the defendants advocate simultaneously. In that event, the office shall place the matter on board for marking of those documents within two weeks from the date of the applicants filing her statement of admission and denial for marking of the documents.

4. Notice of motion is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]