

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

CHAMBER SUMMONS NO. 218 OF 2019
IN
TESTAMENTARY PETITION NO. 604 OF 2011

Hiten Kasturchand Shah

...Applicant
Proposed Petitioner

IN THE MATTER BETWEEN :

Prabhudas Lalchand Shah

...Deceased

Kasturchand Lalchand Shah

...Petitioner

WITH
TESTAMENTARY PETITION NO. 866 OF 2012
WITH
TESTAMENTARY PETITION NO. 604 OF 2011
WITH
TESTAMENTARY PETITION NO. 64 OF 2011
WITH
TESTAMENTARY SUIT NO. 42 OF 2012

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- Adv. R.V. Sipahimalani, for Applicant in CST/218/2019
- Mr. Shivam Chitlangia i/b Mulla & Mulla and Craigie Blunt & Careo, for Petitioner and Plaintiff in TP/64/2011 and TS/42/2012.
- Mr. Udaya Shankar Samudrala, for Respondent in Chamber Summons.

* * *

CORAM : MANISH PITALE, J

DATE : 11th JANUARY, 2024.

P. C. :

1. At the outset, the learned counsel for the parties informed this Court that Testamentary Petition No. 64 of 2011 and Testamentary Suit No. 42 of 2012 are listed together with the present proceedings i.e. Chamber Summon No. 218 of 2019 in Testamentary Petition No. 604 of 2011, but the aforementioned two petitions have nothing to do with the present proceedings.

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2. Hence, Testamentary Petition No. 64 of 2011 and Testamentary Suit No. 42 of 2012, are de-tagged from the present proceedings.

CHAMBER SUMMONS NO. 218 OF 2019

1. Heard learned counsel for the parties.
2. By this chamber summons, the applicant, who is the son of the original petitioner, seeks to be brought on record. The probate petition was filed by the original petitioner in the year 2011. The petitioner expired on 07th November, 2016. He was survived by the applicant (son), his widow and two daughters. The widow and two daughters of the deceased petitioner have given consent affidavit in favour of the applicant herein, which is filed alongwith affidavit in support of the Chamber summons. There is indeed substantial delay in moving the Chamber Summons. The learned counsel appearing for the respondent, who is the nephew of the deceased has objected the prayers made in the Chamber Summons, on the ground of substantial delay and the fact that a separate proceeding initiated by the respondent in the form of a petition for Letters of Administration with Will annexed, resulted in issuance of grant in favour of the respondent.
3. This Court has perused the documents placed on record. Copy of the death certificate indeed shows that the petitioner expired

on 07th November, 2016. In the affidavit in support of the Chamber Summons, the applicant has explained the reasons why substantial delay has occurred in filing the Chamber Summons. Despite objections raised by the respondent, this Court is convinced that the delay deserves to be condoned in the interest of justice. Joint consent affidavit has been given by the other legal heirs in favour of the applicant.

4. Insofar as the contention raised on behalf of the respondent with regard to the independent proceeding initiated by him in the form of a Testamentary Petition for Letters of Administration with Will and the grant issued in consequence thereof, the same can be agitated after the applicant herein is brought on record and opportunity is available to the rival parties to contest their case on merits.

5. In view of the above, the Chambers Summons is allowed. The delay is condoned and the applicant is permitted to be brought on record as legal heir of the original petitioner.

6. Consequential amendments be carried out within two weeks from today. Re-verification is dispensed with.

7. Chambers Summons stands disposed of.

(MANISH PITALE, J.)