

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

**TESTAMENTARY SUIT NO.21 OF 2006
IN
TESTAMENTARY PETITION NO.699 OF 2005**

Mohan Gurbaxani and Anr.Plaintiffs

Vs.

Jer Jawhar ThadaniDefendant

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.1186 OF 2004

Jer Jawhar ThadaniPlaintiff

Vs.

Mohan Gurbaxani and Anr.Defendants

Mr. Kirti Munshi i/b. Mr. B.G. Saraf for the plaintiff in TS/21/2006 and for the defendants in S/1186/2004.

Ms. Deepti Panda a/w. Mr. Mitesh Naik i/b. Dhru and Co. for the defendant no.3.

Mr. Sunil Dond, Section Officer representative of Court Receiver present.

CORAM : K.R.SHRIRAM, J.

DATE : 10th MARCH, 2017

P.C.:

1 Despite directions passed on 5th January, 2017 in paragraphs 9 and 10, the defendants have not complied with the same. Mr. Munshi states that the plaintiff has completed the evidence of PW-3 on 30th January, 2017. The defendant no.3 was to file affidavit of documents and give inspection of the documents within two weeks, i.e., by 15th February, 2017 and within one week thereafter the plaintiff was to give statement of admission and denial with reasons for denial and within one week

thereafter the defendant no.3 was to file his list of witnesses, affidavit in lieu of examination in chief and also compilation of documents and serve a copy thereof upon the plaintiff.

2 The defendant no.3 has done none of it and no acceptable explanation is coming forth. I had given such a tight schedule because the matters are more than 12 years old. The suit is listed today for receiving the evidence and documents of defendant no.3. The matter is to be adjourned due to failure of defendant no.3 in complying with the directions of this court.

3 Therefore, as and by way of last chance, time to comply with the directions contained in paragraphs 9 and 10 of the order dated 5th January, 2017 is extended by one week from today. For today's adjournment, the defendant no.3 to pay a sum of Rs.10,000/- as cost to the plaintiff no.1 in Testamentary Suit No.21 of 2006 and this amount also to be paid by way of cheque drawn in favour of the advocate on record for the plaintiff no.1 within one week from today.

4 Matter to be listed on 3rd April, 2017 on which date the witness of defendant no.3 shall remain present in court. It is made clear that if defendant no.3 does not file the affidavit of documents and give inspection within one week period, the defendant no.3 will not be

permitted to rely on any documents other than those which are mentioned in the affidavit of support of the Caveat. If evidence is not filed within the two weeks period granted, the evidence of defendant no.3 will be treated as closed and the suit will get listed for arguments.

5 The Commissioner to file his report within one week from today.

(K.R. SHRIRAM, J.)