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

TESTAMENTARY SUIT NO.26 OF 2007
IN
TESTAMENTARY PETITION NO.1015 OF 2006

Dr. Hemang Dayashankar Koppikar ...Plaintiff

Versus

Shakuntala Gajanan Kulkarni & Ors. ...Defendants

Mr. Karl Shroff, i/b. Pravin Upadhyay for the Plaintiff.

Ms. Nisha Shah i/b. Kalpesh Joshi Associates for Deponent witness
Dr.(Mrs.) Pravina Shah.

Nishant Tripathi i/b. Tripathi & Co. for the Defendants.

CORAM : R.I. CHAGLA J.

DATE : 4TH AUGUST, 2022

ORDER :

1. Heard learned Counsel for parties.
2. By an order dated 1st July, 2022, witness summons was directed to be issued to Mr. Aroon Khambadkone and Mrs. Shalini Shenoy, witnesses of the Plaintiff, to remain present today for taking the Affidavit in lieu of Examination in Chief on record. Directions

were to be issued to the Court appointed Commissioner for recording their Cross examination.

3. Mr. Karl Shroff, learned Counsel for the Plaintiff has submitted that, Mr. Aroon Khambadkone has not remained present inspite of issuance of witness summons. In so far as Mrs. Pravina Shah is concerned who is also one of the witnesses of the Plaintiff, she is present in Court.

4. Affidavit in lieu of examination in chief of Mrs Shalini Shenoy and Dr. Pravina Shah are accordingly taken on record by a separate order.

5. At this stage, it is brought to the notice of this Court that, the witness summons had not been served upon Dr. Pravina Shah and Mr. Aroon Khambadkone. Dr. Pravina Shah is present today pursuant to the order dated 22nd July, 2022. The Prothonotary and Senior Master shall take necessary steps for service of witness summons on Mr. Aroon Khambadkone as per directions of this Court vide order dated 22nd July, 2022 within a period of one week from the date of this Order.

6. The Advocate appearing for Dr. Pravina Shah is granted liberty to file Vakalatnama which shall be filed within a period of one week from today.

7. By consent, of the parties the Commissioner Mr. Anil Agarwal, Advocate who was appointed as Commissioner by order dated 6th September, 2017 shall record the evidence of the Plaintiff's witnesses namely Mrs. Shalini Shenoy and Dr. Pravina Shah. Hence the following directions are issued:

(a) The Commissioner is at liberty to exercise discretion under Order XVIII Rule 444 of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.

(b) All cross-examination shall be conducted strictly in question and answer form.

(c) The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the court. Should that be done, the original audio visual recording will be submitted along with the

Commissioner's Report to the Registry.

(d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.

(e) All re-examination will be conducted only in court.

(f) Costs of the commission shall be borne equally by the parties.

(g) Parties shall also pay costs of Rs. 500/- per hearing to the Court Clerk who attends the Commission with Court Papers. This is required since these clerks attend the commission in addition to their regular duties and outside their normal working hours.

(h) The Commissioner is not to permit any applications for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavoidability.

(i) The Commissioner shall endeavour to conclude the recording

of evidence by 30th September, 2022 and place report before this Court on 6th October, 2022.

8. Stood over to 6th October, 2022 at 2.30 p.m.

[R.I. CHAGLA J.]