

Ajay

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

TESTAMENTARY PETITION NO. 3726 OF 2021
WITH
TESTAMENTARY PETITION NO. 397 OF 2021

WITH
WILL NO. 153 OF 2021
IN
TESTAMENTARY PETITION NO. 397 OF 2021

WITH
TESTAMENTARY SUIT NO. 96 OF 2022
IN
TESTAMENTARY PETITION NO. 397 OF 2021

WITH
CAVEAT NO. 133 OF 2022
IN
TESTAMENTARY PETITION NO. 397 OF 2021

Ushaben Ashwinkumar Hundiwala alias
Usha Ashwinkumar Hundiwala .. Deceased
Versus
Jatin Ashwinkumar Hundiwala .. Petitioner

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- Ms. Mumtaz Shaikh, Advocate i/by Mr. Prem Gidwani for Plaintiff in Testamentary Suit No.96 of 2022.
 - Mr. M.R. Sherekar, Advocate for Defendant in Testamentary Suit No.96 of 2022.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 15, 2026.

P.C.:

1. Heard Ms. Shaikh, learned Advocate for Plaintiff in Testamentary Suit No.96 of 2022 and Mr. Sherekar, learned Advocate for Defendant in Testamentary Suit No.96 of 2022.

2. Pursuant to the previous order dated 24.02.2026, the second witness of Plaintiff PW-2 namely Ajay Bipin Hundiwala as recorded in the order dated 24.02.2026 shall be visiting India from 20.04.2026 to 23.04.2026.

3. The request made by Ms. Shaikh is reiterated in so far as PW-2 is concerned. She informs the Court that in so far as PW-1 Mr. P.G. Parekh is concerned, his cross-examination has been duly completed as directed by the Court in paragraph No.4 of the order dated 24.02.2026. In that view of the matter, though a request is made to the Court to complete the cross-examination in Court considering the present situation and the impending vacation, it will not be proper for the Court to engage in witness action due to paucity of time and the docket of this Court.

4. In that view of the matter, the Court has requested Mr. Anand R. Pai, learned Advocate who regularly practices as Counsel / Advocate before this Court to assist the Court for completion of PW-2. Mr. Pai. Despite his busy schedule he has graciously accepted the request made by the Court for which the Court is grateful. Mr. Anand R. Pai, Advocate (Mobile No.9820147664) is therefore appointed as Court Commissioner to record and complete the cross-examination of PW-2. Copies of all documents which have been marked by the Court shall be kept ready including the Affidavit-in-lieu of Examination-in-

chief of PW-2 and all other papers in Testamentary Petition and the entire set of the same shall be given to Mr. Pai forthwith in advance before 17.04.2026 so that he will get an opportunity to go through the papers.

5. At the joint request made by the learned Advocates, cross-examination of PW-2 is fixed in this very Court Hall after the Court rises on 20.04.2026, 21.04.2026, 22.04.2026 and 23.04.2026 depending upon the extent of the cross-examination till it is completed.

6. All the original papers shall be made available for the parties by the Court Associate / concerned staff of the Testamentary Department and the same shall be placed before the learned Court Commissioner to enable him to complete the cross-examination of PW-2 in accordance with law by the concerned Department. After the cross-examination work is over on all the aforesaid dates, the papers shall be immediately returned back to the concerned staff of the Testamentary Department in the Court. Concerned staff of the Department is directed to remain present with the documents in this Court Hall after 05:00 p.m. till the cross examination is completed on all dates. No fee of Rs.500/- shall be payable to any Court Clerk for this purpose on the appointed dates as directed by this Court. This is made clear by this Court.

7. Registrar / In-charge of the Testamentary Department shall

ensure that the original documents which have been marked in evidence as Exhibits and the papers shall all be made available for the purpose of completing the cross-examination.

8. All witness action shall be conducted strictly in question and answer form considering that it is a testamentary dispute between the parties.

9. Liberty to the parties as also the Court Commissioner to apply in case of any difficulty.

10. Costs of the commission / stenographer and Commissioner fees shall be borne by the Advocate for Petitioner.

11. The Court Commissioner is at liberty to exercise discretion under Order XVIII, Rule 4(4) of the Code of Civil Procedure, 1908 to note the demeanor of the witnesses where necessary.

12. The Court Commissioner appointed by this Court is directed to file its Report after cross-examination is over in the Court.

13. List the matter on Board on **30th April 2026**. To be placed under the caption '**For Directions**'.

[MILIND N. JADHAV, J.]

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