

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

NOTICE OF MOTION NO.17 OF 2013

WITH

MISC. PETITION NO.66 OF 2012

IN

TESTAMENTARY PETITION NO.498 OF 2009

Vinod Chandrakant Donde Applicant

IN THE MATTER BETWEEN :

Pushpa Shrikant Patki & Ors. Petitioners

Vs.

Vinod Chandrakant Donde & Anr. Respondents

Mr. Kaushal Tamhane i/b. Ms. Meenakshi Dhanuka for the petitioners.

Ms. Neha Bhatt i/b. M/s. Bilawala and Co. for the respondents/applicant.

CORAM : K.R.SHRIRAM, J.

DATE : 25th JANUARY, 2017

PC.:

1 Wrongly on board. The notice of motion to be listed at the time of final hearing of the Misc. Petition No.66 of 2012.

2 The counsel for the petitioners and the respondents jointly make an application for replacing the Commissioner who was appointed for recording of evidence in the matter. Both the counsel state that the Commissioner has expressed her inability to continue in the matter.

3 Therefore, the Commissioner - Ms. Pooja Kshirsagar, who was appointed by this court vide a order dated 3rd November, 2014 is replaced by Mr. Mayur Agarwal, an advocate practicing in this court. The fees,

administrative expenses of the Commissioner together with typing charges and venue charges, if any, to be shared equally between the parties, i.e., 50% by the petitioners and 50% by the respondents and the same will be costs in the petition.

4 The Commissioner to endeavor to complete recording of evidence of PW-2 by 28th February, 2017. The Commissioner to fix minimum two/three dates per session for cross examination of PW-2. If the parties do not respond promptly within 48 hours of receiving a communication from the Commissioner suggesting the subsequent dates, the Commissioner to go ahead and fix the dates convenient to him and the parties shall make themselves available at the time and dates fixed by the Commissioner. If the petitioners or the witness do not remain present, the Commissioner should close the evidence of PW-2 as not made available for cross and if the respondents do not remain present to cross examine the witness, the respondents' cross examination should be treated closed as no cross. Once the dates are fixed, the Commissioner not to grant adjournment on any ground whatsoever.

Liberty to apply.

(K.R. SHRIRAM, J.)