

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.149 OF 2014

Dr.Shubhada Mithilesh & anr. ... Petitioners

Vs.

Prabhakar Narsinha Deolankar & Ors. ... Respondents

Mr.Hemant Ghadigaonkar for the Petitioners
Mr.S.N. Chandrachood for Respondent No.1
Mr.P.J. Pawar for Resp. No.2
Ms.Abha Dastane–Rao, Respondent No.3 – present in person

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **11th DECEMBER, 2015**

P.C.:

1. This Contempt Petition is directed against the breach of the orders dated 18.6.2007, 14.12.2007 which were passed by the learned 4th Joint Civil Judge, Senior Division, Pune in M.A. No.359 of 2006. The probate proceedings were taken out by Respondent No.1 in respect of will of Narayan Ganesh Dastane has executed a will dated 25.4.2006. In the said proceedings, the Court has passed order on 18.6.2007 as follows :

“1) Issue probate in terms of prayer in respect of the Will of the testator late Dr.Mr.Narayan Ganesh Dastane on his depositing requisite court fee and on furnishing indemnity bond with one or two sureties.

2) The applicant is directed to follow usual terms of the probate as regards furnishing information about the estate as per conditions laid down in the probate.”

2. Pursuant to this order, necessary steps were taken for compliance and on 4.12.2007, the probate was signed and handed over to Respondent No.1. The learned Counsel for the petitioner has submitted that the order dated 18.6.2007 is in two parts by which the probate was issued on furnishing the indemnity bond and one or two sureties and the second part was directing the respondent to furnish information about the estate as per the conditions laid down in the probate. He submitted that as per the directions given in the probate, he was supposed to furnish the inventory within six months initially and then for one year and thereafter from time to time as prescribed by the Court. However, it is not done and therefore the learned Counsel pointed out that till today, neither any inventory nor accounts or any details of the estate are furnished to the Court of learned CJSD, Pune.

3. The learned Counsel for respondent No.1 filed affidavit in reply. It is submitted by the learned Counsel for Respondent No.1 that this order of directing Respondent No.1 contemnor to furnish the inventory was stayed on 5.1.2008 in revocation proceedings which were filed by the petitioner on 3.1.2008 at No.21 of 2008. It is further submitted that as there was an ex-parte order of stay, the order dated 14.12.2007 was stayed. Thereafter, stay was vacated on 29.11.2012. However, immediately thereafter within a short period i.e., on 21.12.2012 again stay was granted. He submitted that as the said order was stayed, it was not acted upon by the petitioner

with a view that as the entire probate proceeding is stayed, he need not submit the inventory or the accounts. He further submitted that as per the order of the trial Court, the petitioner was directed to file the accounts within six months after the order which can be construed that in June, 2008, the said order of probate was to be filed and thereafter one year. So, at the most, the period can be stretched upto June 2009. However, the Contempt Petition is filed on 11.3.2014 and there is a delay as it is not filed within one year from the date of the contempt. Hence, it is hopelessly barred by limitation under section 20 of the Contempt of Courts Act and hence, is to be dismissed.

4. Perused the order dated 18.6.2007, the terms and conditions in 14.12.2007 of the probate proceedings also the order of staying the probate proceedings dated 5.1.2008 passed below exhibit 5. I have gone through the order of stay. Thus, Respondent No.1 was restrained from acting upon the probate granted on 14.12.2007. So, the respondents' power to act upon the probate was stayed. The order dated 18.6.2007 as submitted by the learned Counsel for the Petitioners is in two parts. Issuance of probate is first part and pursuant to which the probate dated 14.12.2007 was issued and therefore, by virtue of the order of stay dated 5.1.2008, the said probate dated 14.12.2007 was stayed and hence, there is no breach of the said order dated 14.12.2007. However, in the order dated 18.6.2007 in the second part, Respondent No.1 was directed by the

learned Judge to furnish information about the estate as per the conditions laid down in the probate. Thus, the entire probate might have been stayed. It means the right of the party to act upon the breach is stayed. However, the second part of the order dated 18.6.2007 is necessary for the respondent No.1 to comply with. He should have given the inventory or the information about the estate within six months or one year thereafter and as per the terms decided by the Court. It was not done by him. The order should have been obeyed by the respondent No.1. However, on the point of limitation, the learned Counsel for the petitioner could not satisfy this Court. He submitted that the submission of the accounts and the inventory is a continuous act which was ordered to be performed by the trial Court and therefore, the limitation of one year will not restrict the filing of this petition. He further submitted that the present petitioners are not residents of India, but have stayed in United States of America and therefore, it was not possible for them to come to India and keep charge of their proceedings. He further submitted that by taking advantage of the situation, respondent Nos.1 and 2 played fraud on them and did not submit the inventory or the details of the estate till today.

5. I have perused the judgment in the case of **Pallav Sheth vs. Custodian**¹. In the said case, the period of limitation can be extended if at all fraud is played. If the fraud perpetuated by the party, is unearthed, only

1 2001 AIR (SC) 2763

after receiving information later, that period can be considered as a continuity of wrong or contempt and therefore action of contempt is not barred by section 20. This is the law laid down by the Supreme Court in respect of section 20 of the Contempt of Courts Act. However, it is necessary to see that whether any such fraud played by the respondents is unearthed because of some circumstances which were not within the reach of the petitioners. It is to be noted that the petitioners have filed application for revocation of probate bearing No.21 of 2008 on 3.1.2008 and they have obtained ex-parte stay on 5.1.2008. Thus, it shows that the petitioners started the prosecution as a counter prosecution to the order of issuance of probate. Thus, it cannot be said that the petitioners were not aware of the order passed by the learned civil Judge. Though it is expected that the petitioners are not living in India and they were in U.S., the proceedings were prosecuted by their power of attorney holder through their Counsel.

Under the circumstances, it cannot be said that non-furnishing of the inventory or details of the estate and the accounts went unnoticed by the petitioners. On query, it was found that the Respondent No.3, who supports the petitioner and present in the Court and argued the matter in person, has answered that after 2008, came to India at least 3 to 4 times. Therefore, this is not a case which can be covered within the ambit of ratio laid down in **Pallav Sheth vs. Custodian** (supra), in unearthing of the

fraud. It should be a situation that inspite of due diligence, this fact could not be within the knowledge of the parties. It cannot be applied to the present case and, therefore, the limitation under section 20 cannot be stretched for more than one year and hence, on the point of limitation, though the petitioners have pointed out that there is breach of the order, has failed.

6. It is also to be considered that the stay was obtained to the order dated 14.12.2007 on 5.1.2008 and, therefore, it may be possible that the respondents might have considered that the entire probate proceedings are stayed. Thus, there is some room to give benefit to the respondents/contemnors to such interpretation or understanding of the order and it will not be correct to say that it is willful disobedience; though there is a breach. In view of this, however, it is made clear that second part of the said order is required to be complied with and that part of order is to be obeyed by the respondents by furnishing information to the petitioners about the properties and the amounts.

7. In the circumstances, the Contempt Petition is dismissed.

(MRIDULA BHATKAR, J.)