

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 40 OF 2015
IN
TESTAMENTARY SUIT NO. 34 OF 2004
IN
TESTAMENTARY PETITION NO. 663 OF 2000**

Barrister Nath Pai Sevangan Trust	...Petitioner
<i>Versus</i>	
Atul Tukaram Hule	...Respondent

Mr. U.S. Borade, *for the Petitioner.*
Mr. Keshav Borhade, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 24th June 2015

PC:-

1. This is a Petition that seeks removal of one Atul Tukaram Hule as an executor of the last Will and Testament of the late Hanumant Sadashiv Rane. The Applicant is a public charitable trust and is a named beneficiary in the Will.

2. Hanumant Sadashiv Rane passed away in Mumbai on 2nd March 2000. He left a Will dated 9th May 1996. He made several

bequests in that Will, including *inter alia* in respect of his flat, being Flat No. 7, Jai Mangal Cooperative Housing Society, Shiv Srushti, Kurla (East), Mumbai – 400 024. In Clause 5 of the Will read with Clauses 6 and 7, the Testator has made a bequest to the Applicant, a Public Charitable Trust named the Barrister Nath Pai Sevangan Trust, Dhuriwada, Malwan, District Sindhudurga 416606. There are several other bequests to that Trust in the Will as well.

3. The Testator, Hanumant Rane, was married to one Hemalata Rane. They had three children, a daughter, Mrs. Beena Umesh Chavan, another daughter Smt. Sulekha Satish Chavan and a son, Santosh Hanumant Rane. In his Will, Hanumant Rane appointed two executors, namely, Atul Tukaram Hule and Anand Atul Hule. Both executors were evidently neighbours of the deceased, residing in Flat No. 6, Jai Mangal Cooperative Housing Society, Shiv Srushti, Kurla (East), Mumbai – 400 024.

4. The record before me indicates that Anand Atul Hule renounced his executorship on 20th July 2000. This is noted in paragraph 5 of the Petition as amended.

5. On 27th February 2009, Mr. Justice S.C. Dharmadhikari disposed of Miscellaneous Petition No. 16 of 2008 filed in the present Petition, which had by then been renumbered as a Suit since one of the daughters, viz., Sulekha, had filed a caveat. I may only note, before setting out the relevant portions of Mr. Justice S.C. Dharmadhikari's order, that in paragraph 8 of her Affidavit in Support of her Caveat, Sulekha in terms said that she did not oppose the Will itself but only sought its implementation and

complained that the executor (Anil Tukaram Hule) who filed the probate Petition in 2000 was not acting further in the matter.

6. In the Miscellaneous Petition filed by present Applicant, the Barrister Nath Pai Sevangan Trust, an allegation was made that the executor Atul Tukaram Hule who sought probate by filing this Petition had, despite several requests and meetings, taken no effective steps to obtain the grant. It appears from paragraph 7 of that order that the Plaintiff, being the only surviving executor, Atul Tukaram Hule, filed an Affidavit in Reply. He claimed to have incurred expenses and made various other allegations. Ultimately, since Sulekha gave up her objections and withdrew her Caveat, Mr. Justice S.C. Dharmadhikari held that it was not necessary to frame issues (paragraph 12). He observed that there would not be any further impediment to Mr. Atul Tukaram Hule now obtaining probate. He also held that since Mr. Atul Tukaram Hule had been given an opportunity to show his *bona fides* and since circumstances had changed, it was not necessary at that time to remove him as an executor. However, Mr. Justice S.C. Dharmadhikari specifically observed in paragraph 13, as follows:

“13. ... Needless to state that if the beneficiary has not been given the benefit in terms of the will, even after the probate has been obtained, then, it will be open for the Beneficiary Trust to adopt appropriate proceedings, including applying for removal of the Executor, at a subsequent stage. The Caveatrix also can approach the Court. If no steps are taken to obtain the probate or after the same is obtained, steps are not taken for distribution and disbursement of the estate. All pleas are kept open. Miscellaneous Petition is disposed of with this liberty.”

7. In paragraph 14, Mr. Justice S.C. Dharmadhikari directed the Registry to give priority to the Petition and directed the Petitioner to “take expeditious steps for distribution and disbursement of the estate in accordance with the Will.” He was specifically granted three months’ time from the date of obtaining probate to take necessary steps, including removing any person found to be in wrongful occupation of the property of the deceased.

8. That order was of 27th February 2009. Over six years have passed. The Petitioner has done absolutely nothing. I have before me a list of the pending requisitions updated as on 22nd June 2015. There are twelve requisitions. Almost half of these are crucial. Requisition No. 3 relates to an improper valuation of the assets. Requisition No. 4 says that the appropriate court fees have not been paid. It is also startling to note that Requisition No. 5 states that the record does not reflect that one of the Testator’s children, viz., Beena, was not personally served with the citation as required under Rule 399. There are also discrepancies between the amounts mentioned in paragraph 8 of the Petition and the amounts in the schedule. A sealed drawn up order following Mr. Justice S.C. Dharmadhikari’s order of 27th February 2009 was not made available to the Department.

9. The result is that having obtained an order dismissing a Petition for his removal, and despite specific directions to him to obtain probate and to then administer the Will, the executor has done absolutely nothing at all. He is not even present in Court. I am told that he is unwell. This statement is made on instructions of his son Anand, who is personally present in Court, and who now claims

that he will, as one of the two named executors, obtain probate and administer the estate. Mr. Anand Hule seems to have completely lost sight of the fact that he is no longer entitled to do so, for he expressly renounced his executorship on 20th July 2000, i.e., 15 years ago. He cannot renounce his renunciation.

10. Even in the matter that was before Mr. Justice S.C. Dharmadhikari, there was some controversy about the person who was in occupation of Flat No. 7. Today, an allegation is made that it is the executor who himself has occupied this flat and continues to be in occupation of it.

11. Learned Advocate for the Respondent, on instructions from Mr. Anand Hule, who is personally present in Court, makes a statement that Flat No. 7 in Jai Mangal Cooperative Housing Society, Shiv Srushti, Kurla (East), Mumbai – 400 024 is vacant and is locked and that there is no person in occupation of it. This statement is accepted as an undertaking to the Court. In case this is not sufficiently clearly to Hule father and son, any breach of this undertaking in the slightest manner will invite an order in contempt.

12. The present application is brought by the Barrister Nath Pai Sevangan Trust, the very same Applicant who was before Mr. Justice S.C. Dharmadhikari in 2009. I do not think it is remotely possible to read that order of 27th February 2009 as giving the executor, Anil Tukaram Hule, a blank charter to refuse to act as an executor or restraining the Trust in perpetuity from making an application for his removal. Indeed, the wording of paragraphs 13

and 14 of that order are very clear and, if I may say so with respect, Mr. Justice Dharmadhikari appears to have anticipated several years in advance the present state of affairs and that the Petitioner might not actually fulfil his statutory obligations. It is indeed disheartening to note that what Mr. Justice Dharmadhikari apprehended has actually come to pass.

13. In these circumstances, I do not think it is even remotely possible to allow Mr. Anil Tukaram Hule any further latitude or time. He has squandered the opportunities given to him. He has done so at the expense of a public charitable trust. He has no valid reasons for his conduct; or, more accurately, his complete lack of it. It is not possible to allow the present Petitioner, Mr. Atul Tukaram Hule, the only surviving named executor (in view of the other executor's renunciation) to continue as such. The executor/original Petitioner is forthwith removed as an executor of the Will and estate of late Hanumant Sadashiv Rane.

14. This, however, cannot mean that the entire estate should be allowed to be left unadministered. The original Caveatrix Smt. Sulekha Satish Chavan is personally present in Court. She agrees and undertakes to serve as a Petitioner if this Petition is allowed to be converted into one for Letters of Administration with Will annexed. She reaffirms in Court the statements made in paragraph 8 of her Affidavit in Support of the Caveat. To avoid all ambiguities, she will, on or before Monday, 29th July 2015, file a further affidavit expressly undertaking to serve as a Petitioner for obtaining Letters of Administration with Will annexed and to administer the Will strictly according to its terms.

15. The Petition is allowed to be converted to one for Letters of Administration with Will annexed. The name of the original Petitioner, Atul Tukaram Hule, is to be deleted. Ms. Sulekha Satish Chavan is to be substituted as the Petitioner. This order is to be referenced in the petition and an averment is to be made stating that Mrs. Sulekha Satish Chavan is brought on record as a Petitioner pursuant to this order. Amendment to be carried out without need of reverification on or before 6th July 2015.

16. The court fee of Rs. 30,705/- so far paid by the original Petitioner, Mr. Atul Tukaram Hule, is to be adjusted for the moment against the court fee payable on the converted Petition. Mrs. Sulekha Satish Chavan agrees and undertakes to pay any deficit in court fee as required by the Department. It is further made clear that upon the assets of the deceased being liquidated as directed in his Will, the amount of court fee initially paid by Mr. Atul Tukaram Hule will be refunded to him, and equally, the amount of the deficit paid by Mrs. Sulekha Satish Chavan will be refunded to her. Mrs. Sulekha Satish Chavan will proceed to administer the estate in accordance with the terms of the Will.

17. Clause 15 of the Will also allows the executor to recover his expenses in administration. It is true that in his affidavit filed in the proceedings before Mr. Justice S.C. Dharmadhikari, Mr. Atul Tukaram Hule claimed that he has spent nearly Rs. 2 lakhs till that time. It is not possible to order at this stage to direct in general terms that any amount claimed by Mr. Atul Tukaram Hule be refunded without further enquiry. Mr. Hule will be at liberty to file an appropriate proceeding setting out the expenses incurred by him

along with all necessary particulars, so that directions can be issued for the reimbursement or refund of any amounts found appropriate.

18. In addition, the original Petitioner, Mr. Atul Tukaram Hule, shall within two weeks from today, submit to Mrs. Sulekha Satish Chavan a statement of accounts with all particulars and documents relating to all expenses incurred and all dealings with the estate of the deceased, and will also hand over by that time the originals of all documents relating to all properties of the deceased.

19. The present Miscellaneous Petition is disposed of in these terms.

20. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)