

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 132 OF 2015
IN
TESTAMENTARY PETITION NO. 582 OF 2014**

Shirish Yeshwant Joshi	...Petitioner
<i>Versus</i>	
Rajaram Moreshwar Ajgaonkar	...Respondent

Mr. V. Kapse, i/b Mr. H. Pawar, for the Petitioner.
Mr. V. Y. Sanglikar, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 28th October 2015

PC:-

1. This Miscellaneous Petition deserves to be allowed at once.

2. The Revocation Petitioner (“**Joshi**”) contends that his Caveat was dismissed for non-removal of office objections and the petition by the Respondent (“**Ajgaonkar**”) therefore proceeded uncontested.

3. Mr. Kapse for Joshi points out today, as he did on the last occasion, that the name of Mr. Pawar, the Advocate on record for

Joshi was not shown on the board of the Additional Registrar/Additional Prothonotary on 10th and 11th February 2015. Mr. Kapse's and Mr. Pawar's enquiries show that the reason given for not showing Mr. Pawar's name was that the Caveat was under objection. This is hardly a reason not to show the appearance of the Advocate on Record. That this reason is wholly untenable is borne out by the fact that on 11th February 2015, while the Testamentary Petition in the present matter was listed at Sr. No. 5 without the appearance of Mr. Pawar, the immediately preceding matter at Sr. No. 4 did show the name of the advocate on record for the caveator in that matter, even though that caveat too was under objection. It is only this matter that was singled out for not showing the name of the Caveator's advocate on record.

4. Mr. Kapse also makes a grievance that the notice dated 4th February 2015 supposedly sent by the office of the Caveator's attorney was not despatched and delivery is not established. It does seem that the office has not cared to see whether there was proof of delivery. Mr. Kapse points out that he has repeatedly sought inspection and production of the despatch register but to no avail. Mr. Kapse is in good company in making this request. I have also sought that register and I have also not been given it yet. Even today, despite the order of 23rd October 2015, that register is not produced in Court.

5. Mr. Sanglikar for Ajgaonkar (the Respondent to the Miscellaneous Petition) undoubtedly has submissions to make as to why the Caveat should not, even on merits, be entertained. I do not propose now, in light of what is transpired and on account of the

very serious lapses by the Registry, to put the Caveator to further hardship. Accepting Mr. Sanglikar's submissions at this stage will only result in the Registry's conduct and actions going unnoticed and uncorrected. What I intend to do instead is to leave it open to Mr. Sanglikar to file a separate proceeding for discharge of that Caveat setting out his case. All contentions in that behalf on both sides will be expressly kept open.

6. For the present, the following order is passed:

- (a) The Miscellaneous Petition is made absolute in terms of prayer clause (a).
- (b) Testamentary Petition No. 582 of 2014 is restored to file.
- (c) Caveat No. 3560 of 2014 filed by the present Petitioner is also restored to the file.

7. Given the peculiar facts of the case and since I have not allowed Mr. Sanglikar to canvass his submissions, the Petition is not to be renumbered as a Suit as yet. Mr. Sanglikar will have till 30th November 2015 to file an appropriate proceeding for discharge of that Caveat, if so instructed.

8. List the matter for directions on 1st December 2015.

9. At this stage, after the order has been dictated in open Court, something said to be a 'register' is produced by the Testamentary

Department. It is still unexplained why this is not shown either to Mr. Kapase or Mr. Pawar on behalf of the Caveators when sought.

10. The 'register' now shown to me by the Testamentary Department is supposedly a hand delivery acknowledgement book. To say that I am appalled by this system of record keeping is the mildest understatement. The volume is in tatters. It has pages and leaves and sheets stuck, stapled and glued to it, folded, creased and re-folded. It is inconceivable that in this day and age anyone would think it appropriate, efficient or reasonable to maintain any kind of record in this fashion.

11. What I am now told is even now more surprising. I am told that there are unknown number of such registers ("teen-chaar"). This is the only one found. I have no idea what that is supposed to mean. I should have thought that the entire purpose of maintaining a register was to provide proof of delivery. If the register itself is not kept so that it can be found when needed, how that purpose is achieved defeats me. Perhaps those who man (or, more correctly, un-man) the registry might be able to explain this.

12. Why this register is produced is also a mystery, for I am told that it is a register that does not have the entry in question at all. Therefore, we do not know today whether there was any such entry in any of the other, missing registers; or whether some page is missing from this register for this simple reason that this register also does not have page numbering. The register itself does not on its cover show the year, the sequential register number or any meaningful indicia.

13. Independently of the orders in the matter:
- (a) The Prothonotary and Senior Master will immediately place a proper report explaining why the relevant despatch/hand-delivery register is missing.
 - (b) That report is also to explain fully the so-called method (if any) in maintaining these despatch books, and explaining why they lack the most elementary features including page numbering and volume numbering and why these 'books' are kept instead of proper registers.
 - (c) That report is also to explain why the Original Side Registry does not have a digital backup system of maintaining this record.
 - (d) That report must also suggest revised and revamped protocols relating to hand-delivery of communications and their record-keeping.
 - (e) In addition the report must explain why in this digital age, even communications to government bodies that have designated email ids are still sent only by regular post or hand-delivery and not also by emails; and, if they are sent by email, what system is in place to record this.

- (f) Since the email ids of Advocates on record are part of the Court e-system, the Report must also indicate why no communications are sent to advocates by email or sms.
- (g) I expect that Report to be placed before me irrespective of the next term's assignment by 20th November 2015. The Officer making a Report will be personally present in Court on that date.

(G. S. PATEL, J.)