

*Sharayu*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
TESTAMENTARY SUIT NO. 48 OF 2013  
IN  
TESTAMENTARY PETITION NO. 54 OF 2013  
WITH  
TESTAMENTARY PETITION NO. 54 OF 2013**

|                       |              |
|-----------------------|--------------|
| Harnish Kantilal Shah | ...Plaintiff |
| <i>Versus</i>         |              |
| Sanjay Kantilal Shah  | ...Defendant |

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**Mr. Harish Shah, the Plaintiff present in person.**  
**Mrs. Preeti Jaiswal, i/b Aviraj Tarar, Ms. R.M. Dandekar, for the**  
***Defendant.***

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**CORAM: G.S. PATEL, J**  
**DATED: 23rd June 2015**

**PC:-**

1. There are some typographical errors in order 7th May 2015.  
The following corrections shall be carried out:-

(a) In paragraph 3 the sentence:

“Be the time, the Defendant is able to do that, he may will have been already seriously prejudice without a full opportunity of being heard.”

is to be corrected to read

“By the time, the Defendant is able to do that, he may well have been already seriously prejudiced without a full opportunity of being heard.”

(b) In paragraph 3, the word “*adequite*” is to be corrected to read “*adequate*”.

(c) In paragraph 5, the word “*pro-rata*” is to be corrected to read “*priority*”.

2. Order dated 7th May 2015 be read accordingly.

3. On 7th May 2015 I passed a detailed order. I noted that the Defendant was apparently the unwitting victim of circumstances beyond his control, and that he seemed not to have been made aware that his Caveat in this Petition for Letters of Administration had been discharged and, too, that the Petition had been ordered to proceed without contest. I noted that the Defendant was made aware of this only on 23rd February 2015, but, by that time, a grant was already issued on 13th January 2015.

4. Given the peculiar circumstances, even without a Revocation Petition having been filed by the Defendant, I stayed the operation

of the Letters of Administration till further orders. I did so to enable the Defendant to file his Revocation Petition. I must also note that at the time of my order dated 7th May 2015, the Plaintiff was not present. I therefore, directed that my order of that date be communicated urgently to the Plaintiff.

5. Paragraph 4 of my order of 7th May 2015 reads thus:

“4. Of necessity this can only be a temporary till the Defendant files an appropriate application for revocation of the grant. That application will be considered on its merits without any assurance of the Defendant that it will be allowed. If that application is not made and an order not obtained by that date, or by such further date as this Court may allow, this order of a temporary stay of the operation of the grant will automatically end without further reference to Court.”

6. This order was made available and was uploaded either late in the evening of the 7th May 2015 or at very latest in the morning of 8th May 2015, before the High Court closed for its Summer Vacation.

7. I am informed today that the Defendant has, apart from making an Application for a “certified copy” of the grant, taken no steps whatsoever to file his revocation petition. He has made no application to Court for further time to file the Revocation Petition, or for leave to file that petition on the basis of an ordinary copy of the grant. He has not even obtained an ordinary copy of that grant. I am informed that this Application for a certified copy was made only when the Court reopened after its summer vacation on 8th

June 2015. In other words for the entirety of the May 2015 vacation, although the Court offices were open, the Defendant did nothing. He engaged Advocates only on 15th June 2015. Even thereafter, no Revocation Petition has yet been filed.

8. Today an Application is made for further time to file that Revocation Petition. The submission is that the stay granted on 7th May 2015 should be continued.

9. I am unable to accept or even appreciate this submission. The reasons are many. There is no doubt that the order dated 7th May 2015 was an *ex-parte* and that it adversely affects the Plaintiff/Petitioner. Yet I passed the order only because of the peculiar circumstances that were pointed out to me in relation to the Defendant. This did not and does not mean that the Defendant can take advantage of this to the prejudice of the Plaintiff or that he can indefinitely and inordinately delay matters in this fashion.

10. The Plaintiff is personally present in Court. He has not engaged an Advocate and appears in person. He vehemently opposes any continuance of the stay granted on 7th May 2015. He points out, and in my view quite rightly, that the stay granted on 7th May 2015 could only ever have been a matter of indulgence by the Court and not a an order to which the Defendant was entitled as a matter of right.

11. The Plaintiff, Mr. Shah, also points out that the stay was granted without any adjudication at all on merits, simply because there was then nothing to adjudicate, no Revocation Petition having

then been filed. Mr. Shah is correct in all these submissions. In particular, he is correct when he says that the stay granted in paragraph 3 of the 7th May 2015 order was without a supporting application by the Defendant, without notice to him and without giving him an opportunity of being heard or filing a reply.

12. It would have been entirely understandable had the Plaintiff carried my order of 7th May 2015 in appeal. He has not done so. He has instead, and, in my view very fairly, applied to have the matter listed and urged that since the Defendant has even till date filed no revocation petition, the stay in my order of 7th May 2015 should be vacated.

13. It is impossible to accept the submission of the Defendant and, equally to deny the submission made by the Plaintiff. The reasons given by the Defendant for not filing the revocation petition (that he does not have a 'certified copy' of the grant; and that he has 'only recently engaged advocates') are not in the least compelling.

14. The stay granted on 7th May 2015 to the operation of the grant dated 13th January 2015 is vacated forthwith.

15. The Defendant will be at liberty to file his own Revocation Petition as and when he thinks fit. I am making it clear that all rights and contentions in that regard are expressly kept open. The Revocation Petition will be considered on its merits after it is filed, a copy served on the Plaintiff and the Plaintiff has been given an opportunity to reply to it.

16. Ms. Dandekar is present in Court. As I have noted earlier, she was previously appointed to represent the Defendant. The Defendant has separate legal representation now. Ms. Dandekar is discharged as an Advocate for the Defendant.

17. All concerned to act on an authenticated copy of the order.

**(G. S. PATEL, J.)**