

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL NO. 406 OF 2016****IN****MISCELLANEOUS PETITION NO. 69 OF 2015**

Hansel Vasantry Vadodaria and anr. .. Appellants.

V/s.

Mayank Vasantry Vadodaria .. Respondent.

Mr. Varun Dixit a/w. Mr. Abhishek Bhadang for the Appellants.

Mr. Niket Mehta and Mr. Rabindra Hazari for the Respondents.

**CORAM: DR. MANJULA CHELLUR, C.J. &
M.S.SONAK, J.**

DATE : 15 DECEMBER 2016.

P.C.

1] The appellants appeal the order dated 22 March 2016, by which, learned Single Judge has revoked the probate granted without contest by a departmental order dated 12 March 2015 and granted the respondent herein an opportunity to contest the Will, in pursuance of the caveat instituted by the respondent within the prescribed period of limitation.

2] Mr. Varun Dixit, learned counsel for the appellants, submits that the caveat filed by the respondent was not supported by affidavit as is required under the rules. In such circumstance, the department was justifying in making the order dated 12 March 2015 granting the probate as applied for by the appellants, without contest. He further submits that the cause shown by the respondent for not filing the affidavit in support of the caveat within the prescribed period of

limitation does not constitute a sufficient cause. For this reason, Mr. Dixit submits that there was no warrant to revoke probate and afford the respondent any further opportunity to contest the Will.

3] Mr. Niket Mehta, learned counsel for the respondent, submits that the caveat had been instituted within the prescribed period of limitation and there was sufficient cause for not filing the affidavit-in-reply in support thereof. Upon consideration of such cause, learned Single Judge has exercised the discretion in the matter and there is no unreasonableness involved in the exercise of such discretion. He pointed out that the respondent has also agreed to pay the costs as quantified without any demur.

4] Having heard learned counsel for the parties and perused the material on record, we are satisfied that there is no cause to interfere with the exercise of discretion by learned Single Judge.

5] Admittedly, the respondent has a caveatable interest since, the Will in question was propounded by his father. The material on record also indicates that the respondent is settled overseas and had engaged an advocate to file the caveat and to take steps to pursue the same. The petition filed by the respondent also states that his advocate was indisposed on 23 January 2015 and therefore, had no knowledge that the matter was listed before the Registry on the said date. In such circumstances, we agree with learned Single Judge that the cause shown was sufficient and that this was not a case to deny the respondent an opportunity to contest the Will, specially considering the fact that the caveat had been lodged within the prescribed period of limitation. The delay in filing affidavit in support of the caveat stands

sufficiently explained. There is no question of any unreasonableness in the exercise of discretion. The appellants have even been compensated by way of costs of Rs.25,000/-.

6] For the aforesaid reasons, we dismiss this appeal. There shall, however, be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)