

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO.90 OF 2016
IN
TESTAMENTARY PETITION NO.669 OF 2015**

Smt. Kokila Nitinkumar Virvadia ...Petitioners

Mongiben Chandulal Shah w/o. Chandulal ...Deceased
Kakalchand Shah

Mr. Lalit Doshi, *for the Petitioner.*

Mr. Prakash Shinde, *i/b MDP & Partners for Caveator / Applicant.*

CORAM: G.S. PATEL, J

DATED: 4th July 2016

PC:-

1. This is the Caveator's Chamber Summons. It seeks that the delay in filing the Chamber Summons be condoned, and that the order dated 27th April 2016 of the Additional Registrar (O.S) / Additional Prothonotary and Senior Master dismissing the Caveat be set aside.

2. An Affidavit in Reply dated 2nd July 2016 is tendered and taken on record.

3. The Caveator is a bank. That is in itself unusual in a Testamentary Petition for Probate. But even before that, one must have a look at what reasons are stated for the delay. The Caveat was lodged on 29th January 2016. No Affidavit in Support was filed within the prescribed period. The matter was placed on the board of the Additional Prothonotary and Senior Master on 27th April 2016. The department took care to inform the Advocates for both sides. It did so in writing by a letter dated 22nd April 2016. On the listed date, the Caveator was not represented. It was in these circumstances that the Caveat came to be discharged.

4. First, therefore, as to the reasons for the delay. I find that in the Affidavit in Support of the Chamber Summons, there is no sufficient explanation beyond saying in paragraph 4 that the Defendant was awaiting instructions in consensus from a consortium of banks and that this is the cause of delay. This is no reason at all. The Defendant also says that on the date when the matter was listed before the Additional Prothonotary and Senior Master, the Advocate in question was busy in another Court. Neither of these explanations is persuasive, especially from a bank.

5. What makes it worse is that in my view this Caveat is entirely misconceived from start to finish. The case of bank is set out in paragraphs Nos. 6 to 8. Here the Caveator insists that two of the immovable properties mentioned in the Will have been validly mortgaged in favour of a consortium led by the Caveator. Other documents are mentioned as well. This is no reason to oppose the grant of probate. The Caveator has no caveatable interest. It is far too well-settled to admit of any dispute that probate proceedings do

not decide questions of title. If the Caveator has a title to the property in question, its rights and contentions in that regard are and will remain unaffected by the grant of probate. The Caveator will always be at liberty to adopt suitable proceedings to enforce its mortgage, if necessary against the heirs of the deceased, or in such other fashion as it thinks fit. I am also told that there are several other proceedings in relation to this very property in various Courts. Clearly none of these relate to proof of the Will in its solemn form, and that is the only question with which a probate Court is concerned.

6. For these reasons, and with these observations, the Chamber Summons is dismissed, expressly leaving all rights and contentions open. There are will be order as to costs.

7. In view of this order, since there is no surviving Caveat, the Petition will now proceed as an uncontested petition for probate.

(G. S. PATEL, J.)