

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 69 OF 2015
IN
TESTAMENTARY PETITION NO. 1096 OF 2014
WITH
NOTICE OF MOTION NO. 96 OF 2015**

Myank Vasantry Vadodaria	...Petitioner
<i>Versus</i>	
Hansel Vasantry Vadodaria & Anr.	...Respondents

Mr. Rajiv Narula, *with Mr. Rabindra Hazari & Mr. K.S. Mukhtiar,*
for the Petitioner.

Mr. Mustafa Doctor, *with Mr. S. Pabhikar, i/b M&M Legal*
Ventures, for the Respondents.

CORAM: G.S. PATEL, J
DATED: 22nd March 2016

PC:-

1. Heard.

2. The Miscellaneous Petition seeks revocation of probate granted without contest by a departmental order dated 12th March 2015. That order followed an earlier order dated 23rd January 2015 by which the department discharged the Caveat filed by the present Petitioner on the ground that the Affidavit in Support of it was not

filed within the prescribed time. In short, the present Petition seeks that the delay in filing that Affidavit in Support be condoned *post facto*, that the Caveat be restored to file and that the order granting probate be set aside.

3. There is no dispute that the Petitioner has a caveatable interest. The Will in question is of the parties' father, one Vasantray C. Vadodaria. The Petitioner and Respondents are the three sons of the Testator. Respondent No. 1 was appointed the executor under this Will. He was also the sole legatee of a flat at Vile Parle under Clause 6 of that Will. The Will's residuary clause only says that the remainder of the estate would be dealt with in separate codicils. No such codicils have ever been produced.

4. Whatever be the merits of the opposition to the probate Petition, it is not in doubt that the present Petitioner is permanently settled overseas in America. He says he kept in touch as well as he possibly could with his Advocate. In paragraph 15 of the Petition, it is stated that being indisposed on 23rd January 2015, the Petitioner's Advocate was unaware that the matter was listed before the Registry on that day and therefore did not attend. The Caveat came to be rejected. Probate followed as a matter of course. The Petitioner claims that he was not aware of the further developments in the matter till after the 12th March 2015 departmental order.

5. In these circumstances, I do not think that it would be either just or fair to deny the Petitioner an opportunity to contest the Will. After all, I cannot be unmindful of the fact that the Petitioner did enter a Caveat. The delay is in filing an Affidavit in Support of that

Caveat. In my view, justice demands that the Petitioner should be given an opportunity of presenting his case in full. I do not propose to enter into the merits or demerits of the Petitioner's case at this stage.

6. The Petition is made absolute in terms of prayer clauses (a) and (b). As to costs, Mr. Narula agrees that costs quantified at Rs.25,000 will be paid on or before 12th April 2016.

7. Upon the costs being paid, the Affidavit in Support of the Caveat will be taken on record, the order dated 12th March 2015 will stand withdrawn and set aside, and the probate Petition No. 1096 of 2014 will stand restored to file. It will then be numbered as a Suit and be placed on board for framing issues.

8. List the matter on 20th April 2016 for framing issues.

(G. S. PATEL, J.)