

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO.38 OF 2006
IN
TESTAMENTARY PETITION NO.221 OF 2003**

Bank of India	...Plaintiff
<i>Versus</i>	
Nazma M. Merchant	... Defendant

Mr. Rishabh Sheth, with Ms. Pooja Batra, i/b M/s.S. Bodhanwalla & Co. for the Plaintiff.

**CORAM: G.S. PATEL, J
DATED: 4th July 2016**

PC:-

1. The Petitioner, the Bank of India is the named executor of the Will in question. This is a very old Will of 6th April 1962. At some earlier point in time, one Nazma Merchant, niece of the President of the Khoja Sunnat Jamaat filed a Caveat. That Caveat came to be dismissed by an order dated 21st April 2011 (R.S. Dalvi, J.). As far as I can tell there is no appeal from that order. That order has also not been recalled or set aside at any time. The result is that the Petition is uncontested.

2. However, the difficulty that the Petitioner, the Bank of India, faces is in regard to the production of an attesting witness who can

affirm an Affidavit in Support of the Petition. Given that the Will is of 6th April 1962, it is wholly unreasonable to expect that in 2016, the Petitioner would be able to find any such witness.

3. After some difficulty what the Petitioner has been able to do is to file the Affidavit of one Minnat Noorani who says she can identify the signature of the deceased. The deceased was a family friend and visited Ms. Noorani's house almost daily to help her own father with his accounts. The deceased would write Ms. Noorani's father's accounts in his own hand. She is able from a photocopy of the Will to identify the signature of the deceased.

4. There are two other signatures of the attesting witnesses, but it could be difficult at this stage in time after nearly 60 years to find anybody to be able to identify them.

5. It is pointed out that the bequest in the Will, a copy of of which is at Exhibit "B" to the Petition, is to a charity, viz., the Khoja Sunnat Jamaat for specified purposes. This clause takes effect upon the death of beneficiaries named in clauses 6(a) and 6(b). Those beneficiaries have passed away. What survives, therefore, is the charitable bequest.

6. It is in these very peculiar circumstances and given the date of the Will that I am prepared to accept the Affidavit of Ms. Noorani as being sufficient for the purposes of the Probate Petition.

7. The department to proceed accordingly, acting on an authenticated copy of this order.

(G. S. PATEL, J.)