

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 146 OF 2015
IN
TESTAMENTARY PETITION NO. 1204 OF 2012**

Vandana Ashok Tharwani	...Petitioner
<i>Versus</i>	
Kavita L. Bhagchandani	...Respondent

Mr. Ashutosh Gole, *a/w Girish Paryani, for the Petitioner.*
Mr. Harihar Bhave, *a/w Mrs. R. H. Bhave, i/b M/s. Bhave & Co., for
the Respondent.*

CORAM: G.S. PATEL, J
DATED: 7th April 2016

PC:-

1. There is an Affidavit filed today on behalf of the Petitioner. She is the widow of one of the original Caveators, Ashok K. Tharwani. The most material part of this Affidavit filed today is that Ashok K. Tharwani, the original Caveator died on 1st July 2014 at about 8.30 a.m. Yet, there is on record an Affidavit of Service from the office of the Sheriff to which is annexed a Registered Post A.D. card purporting to show service of a second citation on Ashok on that very day, i.e., 1st July 2014. I do not see how this can possibly be.

2. I do not propose to spend time and resources investigating this question of service. No useful purpose will be served. The fact remains that Ashok K. Tharwani filed a Caveat for himself and for his two sisters. He said he had Powers of Attorney from his sisters. He was asked by the Registry to produce those Powers of Attorney. He did not. The department, therefore, dismissed his Caveat in its entirety, thereby unsuiting not only her sisters but Ashok Tharwani himself, even though his Caveat was clearly competent for himself.

3. The result is that the opposition to the Letters of Administration went without contest. I do not think a party should in circumstances like this be denied a reasonable opportunity of putting forward his or her case or be sent out of Court without being given a fair chance of being heard. Ashok Tharwani was denied that opportunity. So were his heirs. Therefore this Petition.

4. Accordingly, the present Miscellaneous Petition is made absolute in terms of prayer clause (a). The Testamentary Petition No. 1204 of 2012 is restored to file. The revocation Petitioner waives service of the Testamentary Petition and of a citation therein. The revocation Petitioner, i.e., Vandana Ashok Tharwani agrees and undertakes to file her Caveat and Affidavit in Support of it on or before 29th April 2016. However, there will be no extension of time available to Vandana Ashok Tharwani. If she does not file a Caveat and Affidavit in Support of it by that date, the present Miscellaneous Petition No. 146 of 2015 shall stand dismissed and the Letters of Administration with Will Annexed which were granted in Testamentary Petition No. 1204 of 2012 shall stand confirmed. Upon Vandana Ashok Tharwani filing her

Caveat and Affidavit in Support by that date, Testamentary Petition No. 1204 of 2012 will be renumbered as a Suit. It will be then listed for framing issues high on board on 5th May 2016.

5. It goes without saying that since by that at least till such time as Vandana Ashok Tharwani complies with these directions, there is no operative grant of Letters of Administration and the Respondent is not to act on this grant.

(G. S. PATEL, J.)