

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO.241 OF 2016
WITH
CHAMBER SUMMONS NO. 57 OF 2016
IN
CHAMBER SUMMONS (L) 397 OF 2015
IN
TESTAMENTARY PETITION NO. 1247 OF 2016

Asha Tulsidas Narang alias Asha Narang

...Petitioner

Versus

Amit Kishore Narang

...Respondent

Mr. Ravi Rattesar, i/b D.M. Harish and Company for the Petitioner.
Mr. Ajay Maurya, i/b M/s. ARM Legal for the Applicant.

CORAM: G.S. PATEL, J

DATED: 19th December 2016

PC:-

1. This is a Notice of Motion filed to recall and set aside my order of 21st April 2016. By that order, I dismissed the Applicant's Chamber Summons No. 57 of 2016. That Chamber Summons was filed to condone a delay of five days in filing the Caveat. The present Notice of Motion is filed only several months after the dismissal of the Chamber Summons on 23rd September 2016.

2. Mr. Maurya for Applicant contends that the delay is sufficiently explained in the Affidavit in Support of the present Notice of Motion. The explanation is this. The Applicant lives in Dubai. He appointed a lawyer (or, to use his expression in paragraph 3 of the Affidavit in Support, a team of Advocates) to look after his matter. They did not do so.

3. This explanation is like a government statistic: what it reveals is merely interesting. What it conceals is vital. The Applicant does not explain his repeated absence. At page 12 of the Affidavit in Support is a copy of my previous order of 18th April 2016, when the Chamber Summons first came up before me. It was listed at Sr. No.35 on that date. This means that it was not on the supplementary board but on the daily list, one that is notified several days in advance. I noted in that order that delay was only of five days and *I would have allowed it even in the absence of the Applicant (proposed Caveator) or his Advocate* but I did not do so only because, despite a specific order of the Prothonotary and Senior Master directing that the Chamber Summons be served, no service had been effected till then on the Advocates for the Petitioner. They appeared that day only because they saw their name on the daily list. It is for this reason I did not, therefore, allow the Chamber Summons. At the same time, I did not dismiss it on that date although that would have been perfectly legitimate given the absence of the Applicant and his Advocate without cause. I did note that on the adjourned date if the Applicant was absent, I would proceed to dismiss the Chamber Summons and would not grant further time.

4. This is exactly what happened The Chamber Summons was then listed on 21st April 2016, this time on the supplementary board. I noted some of the previous facts. The Petitioner was present as was her Advocate. The Applicant and his Advocate were not. On that date I noted that it was clear to me that the Petitioner was of advanced years and unwell. Even up to that time, the Chamber Summons had not been served. In paragraph 5 of that order, while dismissing the Chamber Summons, I clarified that the Chamber Summons would not be restored on a mere praecipe; that it would not be restored without notice to other side; and that it would not be restored without payment of costs.

5. Even today, I would have considered a more modestly placed application coupled perhaps with an order of reasonable costs, but for three intervening events. First, the fact that in the time since, the grant of probate has already been issued. Therefore, allowing this Notice of Motion and the Chamber Summons today means revoking the grant, which is conceptually a very different thing. Second, there is no explanation at all as to why between April and September 2016, this Applicant did nothing, but allowed the probate Petition to proceed to an issuance of the grant.

6. The third reason is that I now find a thoroughly false statement made before him in the Affidavit in Support of the present Notice of Motion. The Applicant claims now that on 21st April 2016, when his Chamber Summons was dismissed, his Advocate was travelling. He has annexed a train ticket at page 14 of his Affidavit in Support. He claims that this shows his Advocate to have been travelling on 21st April 2016.

7. It does nothing of the kind. It has been unthinkingly annexed. It does not excuse the Advocate at all. The claim based on the annexed ticket is the most outrageous untruth. It shows that the ticket was *booked* on 19th April 2016 for the travel of several persons, including one Sharad Rai, said to be the Applicant's previous lawyer. But that was the date of booking. The travel booking was not for that day at all, or even for the next few days; apart from the fact that it does not explain the Applicant's and his lawyer's absence the *previous* day, 18th April 2016. The booking was for a journey that was not till a month later, starting 16th *May* 2016. This means that the Applicant's Advocate was not in fact travelling on either 18th April 2016 or 21st April 2016. I am now told that the fact that the online booking was made on 19th April 2016 shows that the Advocate was away on that day. The less said of this submission the better.

8. In direct consequence, this means that the statements made in paragraph 4 of the Affidavit in Support of the Notice of Motion are entirely false. That paragraph reads thus:

4. I say that, even otherwise admittedly Mr. Sharad Rai, the instructed advocate on record was not in town as due to some personnel reason he was in his native place, which can be seen and corroborated from the Railway Ticket (to and fro). Copy whereof is at Annexure – II hereto and as such the order impugned herein be quashed and set aside subject to cost which am ready to pay.

(Emphasis added)

9. This Applicant is not only therefore, guilty of repeated and unexplained delay but has also made a false statement on Affidavit. It is not admitted or even shown that Mr. Rai was away on either 18th April 2016 or 21st April 2016. Indeed, no attempt is made to suggest that he was unavailable on 18th April 2016. I note, too, that it is even now unexplained how this Applicant procured from his previous lawyer a pristine and so very convenient print out of a rail travel ticket. He may even be liable to be now prosecuted for perjury or contempt or both.

10. The Applicant is certainly not entitled to any indulgence and most emphatically not at the cost of the Petitioner. The prejudice to her is incalculable. She is old. She is a cancer patient. She has attended court on every single occasion, standing quietly behind her lawyer. Her conduct, and that of her chosen lawyers, in direct contrast to the Applicants and his lawyers, has been faultless. They appeared even without being served, simply on noticing their name on board.

11. This is not a question of a party being penalized for the default of his lawyer. This is a matter of a party making an application seeking indulgence on an *ex facie* and demonstrably false basis. The Applicant's right to any indulgence is forfeit on account of the utterly false statement in his affidavit, and his brazen attempt to mislead the court.

12. I would ordinarily have imposed costs of not less than Rs. 50,000/-, perhaps twice that. The only reason I do not do so today

because Mr Maurya who appears before me for the Applicant is evidently standing in for another lawyer, and I see no reason why he should in the slightest carry any responsibility for the Applicant's conduct or the outcome of this hearing.

13. The Notice of Motion is dismissed. No further applications for restoration or condonation of delay in filing the Caveat will be entertained hereafter on any account whatsoever.

(G. S. PATEL, J.)