

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 2 OF 2014
IN
TESTAMENTARY SUIT NO. 7 OF 2005
IN
TESTAMENTARY PETITION NO. 630 OF 2002**

Vinayak Gopaldas Sanghvi	...Petitioner
<i>Versus</i>	
Kishore Gopaldas Sanghvi	...Respondent

Ms. Mamta Sadh, *with Ms. Jyoti Shah & Ms. Jesal Shah, i/b Daru Shah & Co., for the Petitioner.*
Mr. Ravindra Ganapati Bhat, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 21st March 2016

PC:-

1. Heard.
2. This Petition seeks revocation of Letters of Administration purportedly granted by an order dated 13th June 2008, at page 58.
3. The original Petition No. 630 of 2002 was filed by one Kishore Gopaldas Sanghvi seeking Letters of Administration to the

property and credits of his father Gopaldas Bhagwandas Sanghvi. Gopaldas died on 8th February 1997.

4. The Petition was filed on 15th June 2002. On 16th February 2004, citations were served including on the present Caveator, Vinayak Gopaldas Sanghvi, Kishore's brother. On 23rd December 2004, Vinayak Sanghvi filed a caveat. Six days later, on 29th February 2005, he filed an Affidavit in Support of the Caveat. The Petition was renumbered as a Suit and remained pending for trial as such.

5. In March 2005, matters took a very strange turn. On 30th March 2005, the original Petitioner, now the Plaintiff, purported to refer the matter to the Lok Nyayalaya. The Defendant/ Caveator's consent was not taken. It is another matter whether any such reference could ever be made even with the Defendant's consent and whether the Lok Nyayalaya could ever be invested with testamentary jurisdiction. But leaving that aside, it seems that on 3rd September 2005, the Lok Nyayalaya passed an order disposing off the entire Suit and *inter alia* appointing the Plaintiff, Kishore, as an Administrator. On 25th August 2006, the Lok Nyayalaya's order was set aside by this Court (Coram : D.K. Deshmukh, J.).

6. After this, the matter got even more curious. On 15th March 2007, issues were framed in the Suit. Thereafter, pre-trial procedures began. The details are not immediately material. However, it seems that on 13th June 2008 the matter was listed again. The Respondent was not present in Court. The order of that

day does not note his presence. The impugned order of 13th June 2008 needs to be set out in full:

"1. The Petitioner is one of the sons of the deceased who has died intestate. He has six brothers and two sisters. One of them has expired. The Caveator is the only brother who has opposed the grant of the Letters of Administration of the estate of the deceased. This matter was referred to Lok Nyayalaya on 3rd September 2005 and the order has been passed by the Lok Nyayala, in which the share of the Caveator has been directed to be secured as per the statement made by all the other heirs. Consequently, all the other heirs have taken a Fixed Deposit in Bank of Maharashtra on 25.2.2006 in the name of the Petitioner to the extent of the share of the Caveator in the estate of the deceased. The Petitioner shall transfer the amount of the Fixed Deposit Receipt ("FDR") in the name of the Prothonotary and Senior Master of this Court to secure the share of the Caveator, his brother. The Petitioner shall be entitled to the return of the FDR dated 25.5.2006. The Petitioner shall issue a separate Demand Draft for Rs. 2,14,000/- in favour of the Prothonotary and Senior Master, High Court, Bombay. Upon such Demand Draft being given by the Petitioner, the Caveat shall stand dismissed and the office shall issue a Letters of Administration."

7. There is no manner of doubt that the order of 13th June 2008 was passed on, and only on, the order of the Lok Nyayalaya. The fact that the order of the Lok Nyayalaya has been set aside by Mr. Justice D.K. Deshmukh was evidently not pointed out. In any case, given that issues were framed thereafter on 16th March 2007, i.e., after the date of the Lok Nyayalaya's order of 3rd September 2005, the Suit could not possibly have been disposed of without determination of all these issues.

8. *Actus curiae neminem gravabit*: the act of a Court can prejudice no person. Yet this is what precisely seems to have happened in this case. The revocation Petitioner, the Defendant to the Suit, on being served with a citation, promptly entered his Caveat and filed his Affidavit in Support within time. After that, the original Plaintiff appears to have again and again tried to move behind the Defendant's back, first by referring the matter to the Lok Nyayalay without the Defendant's consent, and then again on 13th June 2008 by persuading the Court to pass the order of that day in the absence of the Defendant and his Advocate and withholding from the Court the fact that the Lok Nyayalay's order had already been set aside and was *non-est*.

9. There is no possible defence to this revocation Petition. It is made absolute in terms of prayer clauses (a), (b) and (c). Suit No. 7 of 2005 (and Testamentary Petition No. 630 of 2002) are restored to file. Since it appears that after filing of the issues several further steps have been taken, it is clearly in the interest of both sides that the Suit itself be tried as expeditiously as possible.

10. By consent, list the matter for directions on 4th April 2016, high on board.

(G. S. PATEL, J.)