

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 6 OF 2016
IN
TESTAMENTARY PETITION NO. 314 OF 2008**

Shri Gopal Nayak	...Petitioner
<i>Versus</i>	
Mr. Ammembal Anant Pye	...Respondent

Mr. Sujeet Kurup, *i/b Kurup Shivaji & Co., for the Petitioner.*
Mr. S. G. Bhandary, *i/b M/s. Bhandary & Bhandary, for the Respondent.*

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

PC:-

1. The only reason this Petition is not being dismissed with costs is on account of the ill health of the Applicant.

2. In this matter everything that could possibly have been done wrong has been done wrong. The title is thoroughly defective. Mr. Ammembal Anant Pye is the Petitioner in this Revocation Petition. Mr. Gopal Nayak is the Respondent to the Revocation Petition. The title is inverted. The subject matter is wrongly shown. It is not a petition for “probate/succession certificate” at all. It is a petition seeking revocation of probate previously granted.

3. The delay is also considerable. It is of 953 days. There is no sufficient explanation for it beyond saying that the Revocation Petitioner Mr. Pye has had acute renal failure and requires dialysis several times a day today. How long he has been in that condition is unknown.

4. *Prima facie*, it appears that at least between 2008 and 2010, Mr. Pye was in a position to attend to his affairs. It is true that Mr. Nayak, the Respondent to the Revocation Petition, had filed a Petition for probate. This was Testamentary Petition No. 314 of 2008. The Revocation Petitioner, Mr. Pye, entered a Caveat. Mr. Gopal Nayak's probate Petition was renumbered as a Testamentary Suit No. 15 of 2010. By an order dated 1st December 2010, a copy of which is at page 42 (even the exhibit numbering is incorrect), Mr. Pye's Caveat was discharged/dismissed. There was no Appeal from that order. No application was made at any time for a recall of that order.

5. Mr. Pye himself had filed a Testamentary Petition No. 504 of 2007. That was for Letters of Administration in respect of the same deceased. That Petition for Letters of Administration by Mr. Pye was dismissed on 22nd July 2013. Mr. Pye filed Notice of Motion No. 163 of 2014 for a recall of that order of dismissal. On 17th March 2015, I heard both Mr. Kurup and Mr. Bhandary on that Notice of Motion. At that time, Mr. Bhandary submitted that the Respondent in that matter, i.e., the Respondent to this Revocation Petition, Mr. Gopal Nayak had already filed a Testamentary Petition in which Mr. Pye's Caveat has been dismissed and which has proceeded to probate. In paragraph 3 of my order of 17th March

2015, a copy of which is at page 35 to the present Petition, I said that there could therefore be no question of grant of Letters of Administration and that Mr. Kurup would need to take appropriate steps in regard to the probate granted. I therefore held that the Petition for Letters of Administration was not maintainable. This position was conceded by Mr. Kurup.

6. As a result, the delay was condoned, and the Testamentary Petition No. 504 of 2007 was restored to file. In any case, no order could possibly be passed on that Testamentary Petition for Letters of Administration till such time as the probate remained outstanding.

7. It is for this reason that Mr. Kurup now seeks revocation of the probate in this thoroughly defective Petition. However, allowing this Petition effectively means sitting in appeal over Mrs. Dalvi J's order dated 1st December 2010 by which Mr. Kurup's client's caveat was discharged. I am not prepared to do this. I also find there is insufficient pleading as to the delay. The caveat having been discharged, the probate was properly granted and there is no question of its revocation. In the guise of revocation, the present applicant/revocation Petitioner cannot seek recall of the Mrs. Dalvi J's order of 1st December 2010 in this roundabout and indirect fashion.

8. The Petition is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)