

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION***

***CHAMBER SUMMONS NO.54 OF 2017
IN
TESTAMENTARY PETITION NO.288 OF 2015***

Bhupendra Yadunandan Acharya & Anr. .. Applicants/Caveators

In the matter between

Yogita Yadunandan Acharya .. Petitioner

Mr.Rahul C. Mestry for the applicants/caveators.

Mr.Vinit D. Jawle for the petitioner.

CORAM : R.D. DHANUKA, J.

DATE : 3rd July 2017

P.C. :

. By this chamber summons, the applicants seek condonation of delay of 232 days in filing affidavit for opposing grant of succession certificate.

2. Notice was served upon the applicants on 20th July 2016. On 21st September 2016, the applicants filed caveat instead of filing an affidavit opposing grant of succession certificate. The said caveat was filed under Section 148A of the Code of Civil Procedure, 1908. Learned Additional Prothonotary and Senior Master passed an order dated 15th February 2017 dismissing the said caveat. The applicants thereafter filed another caveat which was withdrawn. On 17th February 2017, the applicants immediately filed affidavit for opposing grant of succession certificate.

2. Learned counsel for the applicants states that the applicants are the sons of deceased Yadunandan M. Acharya. The original petitioner is the widow of the said deceased. He states that in view of the earlier advocate having filed a caveat under Section 148A of the Code of Civil Procedure, 1908 instead of filing an affidavit opposing grant of succession certificate, the said caveat came to be dismissed by the learned Additional Prothonotary and Senior Master on 15th February 2017. He states that within two days from the date of the said order passed by the Additional Prothonotary and Senior Master, the applicants have already filed an affidavit of objection opposing grant of succession certificate.

3. Learned counsel appearing for the original petitioner, on the other hand, submits that though this Court had granted an opportunity to the applicants to file an additional affidavit, the applicants have not explained the delay in the affidavit-in-support of the chamber summons and also in the further affidavit. He submits that the delay thus shall not be condoned by this Court.

4. A perusal of the affidavits filed by the applicants indicates that instead of filing an affidavit opposing grant of succession certificate, the applicants were advised to file caveat under Section 148A of the Code of Civil Procedure, 1908. The same remained in office objection and came to be rejected by the learned Additional Prothonotary and Senior Master on 15th February 2017. The applicants have filed affidavit of objection on 17th February 2017. Be that as it may, the petition for succession certificate could not be proceeded with in view of the applicants having filed caveat under Section 148A of the Code of

Civil Procedure, 1908 instead of filing an affidavit of objection. In these circumstances, the chamber summons can be allowed if the applicants pays cost quantified at Rs.15,000/- to the original petitioner which shall be paid within two weeks from today.

5. I therefore pass the following order :-

- (i) The chamber summons is made absolute in terms of prayer clause (a) on the condition that the applicants pays cost quantified at Rs.15,000/- to the original petitioner within two weeks from today and shall produce a copy of receipt before the Associate of this Court.
- (ii) It is made clear that if the cost of Rs.15,000/- is not paid within two weeks from today, order passed by this Court in terms of prayer clause (a) to stand vacated without further reference to the Court.
- (iii) The Prothonotary and Senior Master is directed to take affidavit opposing grant of succession certificate affirmed on 17th February 2017 on record after the payment of cost by the applicants to the original petitioner.
- (iv) Chamber summons is disposed of in aforesaid terms.

R.D. DHANUKA, J.