

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

CHAMBER SUMMONS NO.87 OF 2017

IN

CAVEAT (L) NO.90 OF 2017

IN

TESTAMENTARY PETITION NO.1712 OF 2015

Harishchandra Mahadev Walawalkar
And Others

... Applicants/Orig.
Caveators

In the matter between :

Ms. Shubhada Sitaram Sawal

... Petitioner

.....

Mr. Shashikant D. Chandak And Mrs. Kanchan S. Chandak for the
Applicant/Caveators.

Mr. Dushyant Purekar for the Petitioner.

.....

CORAM : S.C.GUPTE, J.

DATE : 22 NOVEMBER 2017

P.C. :

. Heard learned Counsel for the parties. This Chamber Summons seeks condonation of a delay of 433 days in filing a caveat.

2 The petition seeks letters of administration to the property and credits of the deceased Kamini Kamlakant Sawal. The original Petitioner and the Caveators, who are the applicants in the present Chamber Summons, are Class-II heirs of the deceased. The present testamentary petition was filed on 29 September 2015. Two days thereafter, the Applicants/Caveators filed their own petition seeking letters of

administration to the property and credits of the deceased. Sometime on 4 December 2015, a citation of the present petition was served on the Applicants/Caveators. The Applicants/Caveators thereafter amended their testamentary petition on 6 December 2015. The caveators' petition was pending between December 2015 and February 2017. On 7 February 2017, the Applicants/Caveators withdrew their petition and thereafter filed two caveats and took out the present chamber summons.

3 The Chamber Summons is opposed by the Respondent (original Petitioner in the testamentary petition) on the ground that the delay has not been explained and secondly, the Applicants/Caveators have played a fraud on the court. Learned Counsel for the Respondent submits that in the original petition for letters of administration filed by the Applicants/Caveators, the legal heirs of the deceased were not correctly disclosed and it was only after the present petitioners filed their petition and served citations upon the Applicants/Caveators that the Applicants/Caveators amended their own petition by correcting the list of legal heirs and next of kin of the deceased.

4 Merely because the original petition of the Applicants/Caveators did not mention the names of all legal heirs of the deceased, a fraud cannot be attributed to them. Upon realizing their mistake, they in fact amended their petition and included all heirs and next of kin of the deceased in it. The very fact that their own testamentary petition was pending before the Court and which would anyway have been heard along with the present testamentary petition implies that the Applicants/Caveators were prosecuting their own remedy for seeking letters of administration to the

property and credits of the deceased. This remedy was pitted against the present Petitioner's claim for letters of administration. In that sense, there was already a contest and the parties had practically joined issue and were opposing each other. It appears that subsequently, the Applicants/Caveators were advised to withdraw their own petition and press their contest by filing a caveat in the present petition.

5 In the premises, the delay in filing the caveat after withdrawal of their own petition by the applicants/caveators is broadly explained. It is, accordingly, in the interest of justice to allow the present chamber summons, subject to payment of reasonable costs by the Applicants/Caveators.

6 The Chamber Summons is, accordingly, made absolute in terms of prayers-(a) and (b). The Applicants/Caveators shall pay the costs of this chamber summons quantified at Rs.25,000/- (Rs.Twenty Five Thousand Only) to the Respondent (original Petitioner in the testamentary petition). The costs to be condition precedent.

(S.C. GUPTE, J.)