

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

**MISC. PETITION NO. 131 OF 2015
IN
TESTAMENTARY PETITION NO. 780 OF 2013**

Amarjeet Singh S/o. Late Avtar
Singh Gujral .. Petitioner

Jung Bahadur Singh Gujral S/o Late Jamadar
Darshan Singh Gujral .. Respondent

**WITH
MISC. PETITION NO. 100 OF 2015
IN
TESTAMENTARY PETITION NO. 780 OF 2013**

Darshan Singh Gujral .. Deceased

And

Manmohan Kaur Oberoi .. Petitioner

V/s.

Jung Bahadur Singh Gujral .. Respondent

Ms.Ginny J. Rautray i/b B.G. Saraf for petitioner in MPT/100/2015.

Ms.Kanchan Kaur Dhodi i/b B.G. Saraf for petitioner in MPT/131/2015.

Mr.Kunal Bhanage for respondent in both petitions.

CORAM : K.R.SHRIRAM, J.

DATE : 1ST MARCH, 2017

P.C.

MISC. PETITION NO. 100 OF 2015

1 This Miscellaneous Petition is to revoke the Probate of a Will dated 16th August 2014 granted in Testamentary Petition No. 780 of 2013.

2 It is the case of the petitioner that she was not served the citation. The counsel for the respondent stated that when the citation was sent to the address of the petitioner, the same was returned '*unclaimed*' based on which the Prothonotary and Senior Master, High Court, Bombay permitted publication of the citation in two newspapers. Shri Bhanage for the respondent states that the citation was published in two newspapers, viz., Free Press Journal (English edition) and Navbharat (Hindi edition).

3 Rule 399 and 400 of the High Court (O.S.) Rules read as under :

399 Service of citations – Citations shall be served personally when possible. Personal service shall be affected by leaving a true copy of the citation with the party cited and taking his acknowledgement on the original.

400 Service by advertisement – Citations which cannot be personally served as required by the last preceding rule shall be served by publishing the same in such local newspapers as the Prothonotary and Senior Master may direct.

4 Therefore, the rules require that the citations have to be served personally. It can be served by publishing the same in local newspapers as provided in Rule 400 only if citations cannot be served personally, as required under Rule 399.

5 Provisions of Rule 400 is akin to provisions for substituted service provided under Order V, Rule 20 of the Code of Civil Procedure, 1908.

Therefore, before the Prothonotary and Senior Master permits serving the citation by publishing the same in local newspapers, he has to be satisfied that there is reason to believe that the defendant (petitioner in this case) was keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way.

6 Just because the packets sent was returned with the endorsement '*unclaimed*' does not mean that the petitioner was avoiding service or there was no other way to serve the petitioner. It is possible that when the intimation was posted by the Postal Authority, the petitioner may not have been in town and normally there is a time period mentioned in the intimation by which time the addressee could go to the Post Office and collect. It is possible that within the time prescribed, the petitioner did not return. There are various such possibilities. The onus is on the party, i.e., the respondent in this case, to prove that the petitioner in this case was avoiding service. There is nothing on record to show that the petitioner was avoiding service or there was no other way to serve the petitioner. The petitioner and the respondent are also family members and the legal heirs of the deceased. There are various other proceedings going on between the parties in Delhi and admittedly the parties have also been attending various mediation

meetings to attempt to amicably resolve all *inter-se* disputes. Therefore, the respondent always knew the whereabouts of the petitioner and was also meeting the petitioner.

7 In the circumstances, in my view, it is a fit case to grant the relief as sought in the miscellaneous petition. The petition is allowed in terms of prayer clause (a) and accordingly disposed.

MISC. PETITION NO. 131 OF 2015

8 In view of the above order passed in Miscellaneous Petition No.100 of 2015, this petition is allowed and accordingly disposed.

9 Ms.Rautray for the petitioner in Miscellaneous Petition No.100 of 2015 and Ms.Dhodi for the petitioner in Miscellaneous Petition No.131 of 2015 state that on or before 24th March 2017, they will file the caveat and affidavit in support of the caveat and also serve a copy thereof upon the Advocate on record for the petitioner in Testamentary Petition No.789 of 2013.

10 List the Testamentary Petition No.789 of 2013 for directions on 31st March 2017.

(K.R. SHRIRAM, J.)