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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

NOTICE OF MOTION NO.25 OF 2015
IN
TESTAMENTARY PETITION NO.1258 OF 2014

Sital S. Sachanandani ...Applicant

IN THE MATTER BETWEEN :

Mr.Vashi S. Sachanandani ...Deceased

Jyoti P. Chablani ...Petitioner

V/s.

Sital S. Sachanadani ...Respondent

WITH
NOTICE OF MOTION NO.26 OF 2015
IN
TESTAMENTARY PETITION NO.1259 OF 2014

Sital S. Sachanandani ...Applicant

IN THE MATTER BETWEEN :

Mrs.Kamal V. Sachanandani ...Deceased

Jyoti P. Chablani ...Petitioner

V/s.

Sital S. Sachanadani ...Respondent

Mr.Surel Shah I/b Mr.Ajit Kenjale for the Applicant in both the Notices of Motion.

Mr.J.P. Sen, Senior Counsel with Mr.Aditya Pimple and Mr.N.B. Amin I/b B. Amin & Co. for the Original Petitioner.

CORAM : R.D. DHANUKA, J.

DATE : 28TH NOVEMBER, 2018.

P.C. :-

1. By consent of parties, both these notices of motion were heard and are being disposed of by a common order.

2. By these two notices of motion, the applicant prays that this Court shall not rely upon the consent affidavits of the applicant filed by the petitioner in the testamentary petitions alleging that the said affidavits were obtained by practicing fraud and seeks further direction that the original affidavits filed by the applicant be taken in the custody and the office shall be directed to destroy those two affidavits both dated 8th July, 2014 signed before the Notary Public, State of Colorado. For the sake of convenience and in view of the fact that the parties have addressed this Court in Notice of Motion No.26 of 2015, this Court shall summarize the facts and the submissions made by both the parties in the said notice of motion and the out come thereof would decide the Notice of Motion No.25 of 2015 also.

3. It is the case of the petitioner i.e. Jyoti Pradeep Chablani was close to the deceased Mrs.Kamal Vashi Sachanandani, who was residing at the time of her death had a fixed death had of abode at 15432 East Prentice Drive Centennial, Colorado, United States 80015 died on 12th April, 2014 leaving her joint last Will and testament dated 22nd March, 2013. It is the case of the petitioner that the petitioner is the sole legatee named under the said Will.

Mr.Trishal P. Chablani was appointed as the sole executor under the said Will who has renounced executorship by filing his affidavit. The said deceased left her surviving 11 heirs and next of kins according to the Hindu Succession Act, 1956 including the applicant in the notice of motion. It is the case of the petitioner that the said deceased died issue-less. The parents of the said deceased predeceased the deceased.

4. Upon the demise of the said Mrs.Kamal Vashi Sachanandani, the petitioner herein filed a petition for Letters of Administration (Petition No.1259 of 2014) with the Joint Will annexed dated 22nd March, 2013 in this Court on 2nd July, 2014. The petitioner also filed the consent affidavit of Chitra Suresh Makhija dated 8th July, 2014, Rinku Kamal Sadnani dated 8th July, 2014, Laxmi Haresh Chablani dated 7th July, 2014, Trishal Pradeep Chablani dated 17th July, 2014, Bhagwati K. Manglani dated 19th July, 2014, Kavita Suresh Badlani dated 12th July, 2014, Hari S. Sachanandani dated 8th July, 2014, Sital S. Sachanandani dated 8th July, (applicant herein) in the said testamentary petition. Similar affidavits are also filed by the petitioner in Testamentary Petition No.1258 of 2014 which has been filed *inter-alia* praying for Letters of Administration with the Joint Will annexed dated 22nd March, 2013 of Vashi Shamdas Sachanandani.

5. On 18th February, 2015, the applicant filed the Notice of Motion No.26 of 2015 *inter-alia* praying that the petitioner shall not rely upon the consent affidavit filed by the applicant referred to aforesaid on the ground that the same has been obtained by practicing fraud and for other reliefs.

6. Mr.Surel Shah, learned counsel appearing for the applicant invited my attention to various averments made in the affidavit in support of the notice of motion and submits that the elder brother of the applicant Hari Shamdas Sachanandani had approached his client and took him into confidence that the property of the said deceased Mrs.Kamal Vashi Sachanandani were required to be protected and therefore some proceedings were required to be initiated. It is the case of the applicant that the said Hari Shamdas Sachanandani had in fact shown him a photocopy of the purported Will of the said deceased in which it was mentioned that all the legal heirs will have equal shares in the properties left behind by the said deceased.

7. The applicant relied upon the elder brother Hari Shamdas Sachanandani and accordingly did not ask for a photocopy of the said Will. It is the case of the applicant that the said elder brother Hari Shamdas Sachanandani took undue advantage of the situation and took his signature on the consent affidavits with an assurance that

the applicant shall be given his share in the properties both in India and U.S.A. The applicant believed his elder brother and signed the said consent affidavits. The elder brother did not show any other documents to the applicant and only obtained his signature on the documents.

8. In paragraph 8 of the said affidavit, it is alleged that even the other legal heirs have challenged the illegal, fraudulent and improper action of the petitioner as the petitioner with *mala-fide* intention and with ulterior motive to siphon the entire property and fixed deposits of the said deceased, has withdrawn the same from the concerned banks. Kavita Ashok Daswani and Mrs.Veena Vishnu Vaswani have issued legal notice to the petitioner.

9. It is the case of the applicant that the applicant thereafter made enquiries with the said elder brother Hari Shamdas Sachanandani as to the status of the properties and deposits lying with the bank however, he avoided to give any information on one pretext or other and assured that he will provide the shares to all the legal heirs after completion of proceedings. The applicant has been staying in U.S.A. for last more than 32 years. The applicant therefore approached his advocate and requested him to make enquiries in these proceedings. The advocate of the applicant applied for certified copies of the proceedings and informed the applicant that the

petitioner who is the sister of the applicant had applied for probate of the Will for herself.

10. It is the case of the applicant that he made further enquiries with the bank and learnt that the petitioner had played fraud on all the legal heirs of the deceased and with *mala-fide* intention and ulterior motive thereby hand in gloves with Union Bank of India without obtaining any succession certificate or otherwise withdrew the amounts. It is the case of the applicant that the petitioner had committed fraud upon the applicant. The Will produced by the petitioner is alleged to be forged, false, fabricated and not supported by any Doctor's certificate. It is the case of the applicant that the medical condition of his brother and sister in law was not proper and they were not in proper state of mind to execute the alleged Will on the date of execution of the alleged Will. Mrs.Kamal Vashi Sachanandani was suffering from Cancer.

11. The allegations made by the applicant in the affidavit in support of the notice of motion are opposed by the petitioner by filing a detail affidavit in reply. Mr.Sen, learned senior counsel appearing for the petitioner submits that the deceased Vashi Shamdas Sachanandani was the elder brother of all. All the brothers were settled in U.S.A. All the sisters, including the petitioner were married. The petitioner was the youngest of all the sisters and was close to

the parents and also the deceased brother and his wife. He submits that the Joint Will dated 23rd March, 2013 was executed by the deceased brother and his wife out of their free will and consent and had been attested by two witnesses. All the sisters have already given their consent for grant of Letters of Administration with the Will annexed. The eldest brother Hari Shamdas Sachanandani had disclosed all the siblings about the Will of the deceased and his wife including the applicant.

12. It is submitted that the applicant after reading and understanding the contents of the consent affidavit and with his free will, gave no objection to the grant of Letters of Administration of the Will dated 23rd March, 2013 in favour of the applicant. He also invited my attention to the said consent affidavit and would submit that the said consent affidavit was admittedly signed in presence of the Notary Public. It was clear from the said consent affidavit that the applicant was aware that the petitioner had filed a petition for Letters of Administration with the Will annexed in this Court. The said affidavit was filed in this testamentary petition. The details of the proceedings were mentioned in the said consent affidavit. He submits that the applicant is an educated person and had given his no objection with his free mind and consent for grant of Letters of Administration with the Will annexed in favour of the petitioner

without service service of any citation / notice upon him and without justifying his share in the estate of the deceased. He submits that no complaint of any nature whatsoever was filed by the applicant either against the petitioner or said Hari Shamdas Sachanandani. It is submitted that the said Hari Shamdas Sachanandani had also filed separate similar consent affidavit in favour of the applicant.

13. It is submitted by the learned senior counsel that none of the other legal heirs, who had filed similar consent affidavits have applied for withdrawal of this consent affidavits. The notice of motion filed by the applicant is totally *mala-fide*. He submits that the allegations of fraud and fabrication etc. made by the applicant in the affidavit in support of the notice of motion are totally vague and frivolous.

14. Learned senior counsel placed reliance on the judgment of this Court in case of **Haripada Roy vs. Subhah Chander Rewari (2014) 2 Mh.LJ 234** and in particular paragraphs 4, 10 and 11 and the judgment of this Court in case of **Suresh Sunderdas Harpalani & Anr. vs. Dayal Sunderdas Harpalani & Ors. 2016 SCC OnLine Bom. 10326**. He submits that both these judgments are clearly applicable to the facts of this case and are binding on this Court.

15. Mr.Surel Shah, learned counsel for the applicant in rejoinder reiterates his submission made in the affidavit in support of

the notice of motion and would submit that both these judgments relied upon by the learned senior counsel for the petitioner are clearly distinguishable in the facts of this case. He however fairly admits that his client has not filed any other proceedings against the elder brother Hari Shamdas Sachanandani including the criminal proceedings and also did not file any suit for Administration of Estate in respect of the property and estate of both the deceased i.e. Vashi Shamdas Sachanandani and his wife.

16. A perusal of the record indicates that the said deceased Vashi Shamdas Sachanandani was the brother of the petitioner, applicant and several other parties. The applicant has not disputed his signature on the consent affidavit referred to aforesaid which was notarized before the Notary Public, State of Colorado on 8th July, 2014. It is not the case of the applicant that he is an uneducated person and has not understood the contents of the said consent affidavit filed by him. His case however, is that the elder brother Hari Shamdas Sachanandani had approached him and took him into confidence that the property of the said deceased in India were required to be protected and therefore, certain proceedings were required to be initiated. It is also not the case of the applicant that the said Hari Shamdas Sachanandani showed him a photocopy of the purported Will in which it was mentioned that all the legal heirs will

have equal shares in the property left behind by the said deceased. The applicant accordingly did not ask for any copy of the said Will and had full faith in the said Hari Shamdas Sachanandani.

17. The applicant did not produce any correspondence between the applicant and the said Hari Shamdas Sachanandani placing on record that any such alleged copy of the Will showing that all the legal heirs of the deceased were given equal share was shown to him. He also did not call for any such alleged document from Hari Shamdas Sachanandani or from the petitioner. There is no proceeding filed by the applicant for seeking Administration of Estate of the properties of the said deceased on the premise that the said deceased died intestate. He also did not file any separate application for administration of the Estate of the said deceased on the premise that there was a Will giving equal legacy to all the legal heirs of the said deceased. No criminal proceedings are filed by the applicant against the said Hari Shamdas Sachanandani alleging fraud or misrepresentation till date though this notice of motion which was filed only in the months of February, 2015 and the consent affidavit came to be filed as far back as on 8th July, 2014.

18. A perusal of the record further indicates that the other legal heirs including the said Hari Shamdas Sachanandani have filed similar consent affidavits in favour of the petitioner for grant of Letters

of Administration and waiving service of citation upon each of them. None of the other parties have filed similar proceedings for withdrawal of those consent affidavits or for the relief that the concerned affidavits should not be allowed to be relied upon by the petitioner.

19. A perusal of the affidavit in reply filed by the petitioner indicates that there were certain monetary transactions between the said Hari Shamdas Sachanandani and the applicant. According to the said affidavit, the applicant had borrowed a sum of US \$ 2,00,000 from the said Hari Shamdas Sachanandani on various terms. The loan agreement was also entered into between the applicant and the said brother Hari Shamdas Sachanandani on 27th April, 2014. Under the said agreement, the applicant had agreed to clear the loan by May, 2017. The applicant had also made certain part payments under the said agreement to Hari Shamdas Sachanandani. The applicant has not disputed these allegations of the petitioner in the affidavit in rejoinder filed before this Court. The applicant has also not disputed that the said Hari Shamdas Sachanandani had filed the proceedings against the applicant in the District Court County of Arapphoe, State of Colorado for recovery of substantial amount.

20. Insofar as the allegations of fraud and mis-representation made by the applicant in the affidavit in support of the notice of

motion is concerned, such allegations are totally vague and without particulars and thus no cognizance of such allegations can be taken into consideration by this Court. I am thus not inclined to accept the submissions made by Mr.Surel Shah, learned counsel for the applicant that there was any fraud or mis-representation committed by the said Hari Shamdas Sachanandani or that copy of any Will bequeathing equal share to all the legal heirs of the said deceased was shown to the applicant or that such alleged Will exists.

21. This Court in case of **Haripada Roy** (supra) has considered the similar situation and after adverting to the judgment of the Hon'ble Supreme Court in case of **Bihar State Electricity Board, Patna & Ors. vs. M/s.Green Rubber Industries & Ors. (1990) 1 SCC 731** and in case of **M/s.Grasim Industries Limited & Another vs. M/s.Agarwal Steel, AIR 2010 SC (Supp) 291** rejected similar allegations. It was held by the Hon'ble Supreme Court in those judgments that the petitioner being a graduate would not sign any consent affidavit without reading such affidavit or without applying his mind and without understanding the legal effect thereof. The Hon'ble Supreme Court also held that if such justification sought to be given by the petitioner who had filed the consent affidavit was accepted by this Court, there would be no legal sanctity of such affidavit filed by such party and accepted by this Court. The said

judgment would clearly apply to the facts of this case.

22. In my view, the applicant being an educated person and being fully aware of the proceeding filed by the petitioner in this Court in which such consent affidavit was filed by him in presence of the Notary Public as far back as on 8th July, 2014 cannot be allowed to challenge the said affidavit by filing a notice of motion after several months. It is clear that the allegations made by the applicant are totally after thought, false and not substantiated and thus cannot be accepted by this Court. This Court in case of **Haripada Roy** (supra) also considered the similar facts and disbelieved the allegations of the applicant that the consent affidavits were filed under any coercion or pressure. The said judgment of this Court in case of **Suresh Sunderdas Harpalani & Anr.** (supra) also would assist the case of the petitioner. I am respectfully bound by the said judgment which would apply to the facts of this case.

23. In my view, both these notices of motion are thus thoroughly misconceived. I therefore, pass the following order :-

a). The Notice of Motion Nos.25 of 2015 and 26 of 2015 are dismissed.

b). There shall be no order as to costs.

(R.D. DHANUKA, J.)