

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 173 OF 2014
IN
TESTAMENTARY PETITION NO. 720 OF 2014**

Dilip V Vora Alias Dilip Vrajlal Vora	...Plaintiff
<i>Versus</i>	
Geetaben Kanakkumar Bhatia	...Defendant

Appearance not given.

**CORAM: G.S. PATEL, J
DATED: 12th October 2018**

PC:-

1. Once again none appears for the Defendant. On the last occasion also none appeared. In fact, the sole surviving Defendant does not seem to have appeared since 2017 at any stage. After filing a Caveat through Mr Ramprakash Pandey in August 2014, the Defendant has done nothing at all.

2. The matter cannot be adjourned indefinitely like this and I see no reason why the Plaintiff should be put through the trouble of leading Evidence Affidavits, producing documents and paying for repeated appearances in Court if the Defendant chooses to stay away.

3. There is an order of 8th August 2017 of RG Ketkar J, and this is how it reads:

Heard Ms Singh, learned Counsel for Plaintiff.

2. Ms Singh has invited my attention to the affidavit dated 13th June 2017 made by Krishnaben Kantilal Jerajani. **In paragraph 1, it is stated that she had filed Caveat and Affidavit in support of the Caveat due to adverse knowledge and under pressure of her nieces (i) Pushpa Naren Surti and (ii) Geetaben Kankumar Bhatia. In paragraph 2, it is stated that Will annexed to the Petition has been read over, explained and interpreted to her in Gujarati and after fully understanding the same in all respects, she has stated that the said Will is proper and genuine Will of the deceased Haresh Ranjit Jerajani. She is accepting the same and facts of the said Will. In paragraph 3, it is stated that she is unconditionally withdrawing the Caveat filed by her on 22nd August 2014. Ms Singh states that Krishnaben Kantilal Jerajani is present in the Court. Mr Rawal, Associate has asked questions to her in Gujarati language. During the course of interrogation, she stated that the contents of the affidavit are true and correct and she is withdrawing the Caveat unconditionally.**

3. After considering the statements made by her in the Court before the Associate Mr Rawal, I am satisfied that she has confirmed the contents of the Affidavit. Accordingly, Caveat dated 22nd August 2014 filed by her is allowed to be withdrawn and is dismissed as withdrawn. Order accordingly.

(Emphasis added)

4. There were in fact three Caveators. Krishnaben K Jerajani (“**Krishnaben**”), the Petitioner’s mother has passed away. The order of RG Ketkar J referred to above shows that Krishnaben withdrew the Caveat she had filed. The other Caveats were filed by Pushpa Naren Surti (“**Pushpa**”) and Geetaben Bhatia (“**Geetaben**”). Geetaben passed on. Only Pushpa continues and it is she who is persistently absent and has not been attending this proceeding. The order of RG Ketkar J also notes the allegations made by Krishnaben, that she was forced by this very Pushpa into filing a Caveat to oppose this Petition.

5. Having regard to the fact that this matter has been pending at this stage since 2014, I believe that a further delay will seriously prejudice the Plaintiff/Petitioner for no fault of his own.

6. He has diligently attended the matter and so have his Advocates. Issues were framed almost a year ago on 15th November 2017 (SC Gupte J). I then issued directions on 10th January 2018 for the filing of Evidence Affidavits etc and the Plaintiff has complied with that as well. The matter has reached in its turn thereafter. I see no reason why the matter should constantly be adjourned because the sole continuing Defendant chooses to remain absent.

7. This prejudice to the Plaintiff is considerable. If the Defendant is not interested in pursuing her cause despite all these opportunities, then an order for dismissal of Caveat is certainly called for.

8. The Caveat filed by Pushpa, the sole surviving Defendant is discharged. The Petition is therefore uncontested. It is made absolute. I note that there is no question of marking the documents and offering Plaintiff for cross-examination because there is no one to cross-examine the Plaintiff in the first place.

9. The Registry will proceed to issue Probate and it will be issued on a priority basis without insisting on further proof of service of citation.

10. No application for recall of this order or for restoration of the Caveat will be entertained unless:

(a) There is a substantive Motion filed and served after at least two weeks' prior notice is given to the Advocate for the Petitioner and

(b) The Applicant, Pushpaben, and her advocate are present in Court on every single day that that restoration Motion is listed.

11. Further, any such order of restoration may be made subject to a condition precedent of payment to the Plaintiff of heavy costs.

(G. S. PATEL, J)