

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

NOTICE OF MOTION NO.82 OF 2017
IN
TESTAMENTARY PETITION NO.1405 OF 2013

Ursula Thakkar

...Applicant

vs.

Urmi N. Prasad

...Respondent/
Ori. Petitioner

Mr. Mayur Khandeparker a/w. Mr. Umesh Tawari, Ms. Hetal Vithlani, Mr. Hrishikesh Mastikar and Mr. Kunal Kamath I/b. M/s. S. Ashwinikumar & Co., for the Applicant.

Mr. Astad Randeria a/w. Ms. Anagha Mhatre I/b. Khimani Associates, for the Respondent/Ori. Petitioner.

CORAM : R.D. DHANUKA, J.

DATE : JANUARY 22, 2019

P.C.:

. By this Notice of Motion, the Applicant seeks restoration of the Testamentary Petition by adding the Applicant as Co-Petitioner in the Testamentary Petition.

2. It is not in dispute that there are six Executors appointed by the deceased late Mrs. Sharayu Ramesh Thakkar including the original Petitioner Urmi Prasad and the Applicant to the Notice of Motion and four other Executors.

3. Mr. Mayur Khandeparker, learned counsel for the Applicant invited my attention to the order dated 24th March, 2014 passed by the learned Prothonotary & Sr. Master of this Court allowing the Petitioner to withdraw the Petition No. 1405 of 2013 with liberty to file a fresh Petition by joining the Applicant herein as Co-Executor as per law. He states that the learned Prothonotary & Sr. Master has no power to allow the Petitioner to withdraw the said Petition with liberty to file a fresh Petition. He submits that in any event, if the Petition is restored, his client be impleaded as one of the Co-Petitioner and as one of the Executors under the will in question.

4. Mr. Astad Randeria, the learned counsel for the Petitioner, on the other hand submits that it is not in dispute that there are four Executors under the will. (1) Dr. Ramesh Maganlal Thakkar, (2) Ms Charita Thakakr, (3) Mrs. Urmi N Prasad and (4) Ms Ursula Thakakr. All these 4 Executors were appointed under the will in question and some of them are senior citizens. He invited my attention to the affidavits filed by other Executors and stated that none of them have any objection in the proposed restoration of the Petition No. 1405 of 2013 and seeks direction

that the Petition be restored and the original Petitioner be directed to amend the said Petition so as to implead all these four Executors as Co-Petitioners therein.

5. It is submitted by the learned counsel that under Section 224 of the Indian Succession Act, 1925 since there are several Executors simultaneously or at different times, when several Executors are appointed, probate may be granted to them all simultaneously or at different times. He also placed reliance on Section 229 of the said Act and submits that when a person appointed as Executor has not renounced the Executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the Executor to accept or to renounce his Executorship. He further submits that admittedly till date no notice or citation has been served upon to any of those four Executors/ Executrixes. Therefore, this Court cannot grant probate only in favour of the original Petitioner or the Applicant. He submits that in this case all the other four Executors have specifically shown their willingness to act as a Executors and their impleadment as Co-Petitioners.

6. Learned counsel invited my attention to the order dated 10th April, 2017 passed by this Court in Notice of Motion (L) No. 621 of 2017 in Suit (L) No. 170 of 2017. This was filed by the same Applicant who has filed the present Notice of Motion. He submits that in the said order, this Court has recorded a statement made by his client that the Applicant had filed a Notice of Motion for restoration of the Petition No. 1405 of 2013 in which his client would give consent for restoration of the said Petition so that all the six Executors including the Plaintiff can be joined as Petitioners.

7. Mr. Khandeparker in rejoinder submits that since four Executors have not applied for their impleadment, this Court shall not implead them as Co-Petitioners at this stage. He submits that Notice of Motion filed by his client be allowed and thereafter if any application for impleadment is made by those four Executors, the Applicant will have a chance to oppose their impleadment as Co-Petitioners in the Petition No. 1405 of 2013.

8. A perusal of the order dated 10th April, 2017 passed by this Court in Notice of Motion (L) No. 621 of 2017 which was filed

by the Applicant herein in the Petition for grant of probate in respect of mother of the Applicant and the original Petitioner, this Court has recorded a statement made by Mr. Dwarkadas, learned senior counsel for the Petitioner herein that his client would give consent for restoration of the Petition No. 1405 of 2013 in the Notice of Motion filed by the Applicant herein so that all six Executors including Applicant therein who is also Applicant in Notice of Motion (L) No. 621 of 2017 can be joined as Petitioners. The said statement is not opposed by the Applicant herein in the said matter.

9. It is not in dispute that there are six Executors in question. The Petition is however filed only by Mrs. Urmi Prasad which was admittedly one of the Executor. The matter appeared before the learned Prothonotary and Sr. Master and by an order dated 24th March, 2013 he allowed the Petitioner to withdraw the said Petition with liberty to file a fresh Petition by joining the Applicant herein as Co-Executor as per law. A perusal of the prayer clause (a) in Notice of Motion indicates that the Applicant seeks restoration of Testamentary Petition by the Co-Petitioner in the Testamentary Petition.

10. In my view though the Prothonotary and Sr. Master could not have granted liberty to the Petitioner to file a fresh Petition and to implead the Applicant as Co-Petitioner, the fact remains that neither the original Petitioner has filed a fresh Petition nor the Applicant to this Notice of Motion filed a separate Petition inter alia praying for a probate of the Will in question. The Applicant on the other hand has applied for restoration of the Petition and for impleadment.

11. Mr. Khandeparker, learned counsel for the Applicant does not dispute that in view of Section 224 of the Indian Succession Act, 1925 when there are several Executors appointed, probate could be granted to them simultaneously or at different times. He also does not dispute that the original Petitioner has not served any citation upon the four Executors and thus there was no occasion for those Executors to renounce their right to the Executors. On the other hand a perusal of the record indicates that other four Executors have shown their willingness to act as a Executors and for their impleadment as Co-Petitioners in Petition No. 1405 of 2013.

12. I am thus not inclined to accept the submission of Mr. Khandeparker that four Executors cannot be impleaded by this Court at this stage. In view of the fact that some of the Executors are senior citizens and in view of the consent given by all the four Executors, to act as Executors and have given consent for their impleadment, I am inclined to consider those affidavits which are already on record and to implead them as party Co-Petitioner.

13. I therefore pass following order:

(1) Notice of Motion No. 82 of 2017 is made absolute in terms of prayer clause (a).

(2) It is directed that the Petitioner shall implead not only the Applicant to this Notice of Motion as a Co-Petitioners but also the four Executors i.e. (1) Dr. Ramesh Maganlal Thakkar, (2) Ms Charita Thakakr, (3) Mrs. Urmi N Prasad and (4) Ms Ursula Thakakr as Co-Petitioners.

(3) Amendment to be carried out within two weeks from today.

(R.D. DHANUKA, J.)