

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

CHAMBER SUMMONS NO. 84 OF 2019

IN

CAVEAT (L) NO. 97 OF 2019

Krishna Rani Baldev Raj Sabharwal ... Deceased

Rita Sanjeev Anand ... Applicant

In the matter between

Hemanshu RajKumar Sabharwal ... Petitioner

And

Rita Sanjeev Anand ... Caveatrix

Mr. Raj Patel a/w Mr. Niket Jani i/b Vigil Juris for the Applicant.
Mr. Santosh Mishra i/b Kochhar & Co. for the Petitioner.

CORAM : R.I. CHAGLA, J.

DATED : 28th OCTOBER, 2021.

P.C. :

1 Heard the learned Counsel for the parties.

2 By this Chamber Summons, the Applicant is seeking condonation of delay of 88 days in filing the caveat along with affidavit in support and for taking the caveat along with affidavit in support on record and to allow the Caveator to be heard in the matter.

3 The Applicant has stated that the Applicant has been residing overseas since 1993. It is stated by the Applicant that the service of the citation was sought to be effected on 16.12.2018 when the Applicant was overseas and the service was on the watchman of the building to accept on behalf of the Applicant.

4 The Applicant only returned to India on 03.01.2019 and met her sister on 06.01.2019. That is when the Applicant's sister handed over the envelope containing the citation.

5 The delay is sought to be explained in filing the present Chamber Summons on the ground that the Applicant's sister had filed proceedings i.e. Civil Suit (Original Side) No.362 of 2017 seeking partition of the estate left by the deceased. The Suit was, thereafter, disposed of and in view of the disposal of the Suit, the Applicant's sister had filed a Transfer Petition in the Supreme Court being Transfer Petition (Civil) Diary No.16144 of 2018. The Transfer Petition sought transfer of the Probate Petition from the Bombay High Court to the Delhi High Court. On 27.08.2016, notice was issued in the Transfer Petition. Since, the hearing of the Transfer Petition had not taken place, the Testamentary Department of this Court proceeded further with the process for grant of probate. The Applicant's sister had moved the Supreme Court for final

relief of transfer or if the Transfer Petition could not be heard then to stay further proceedings in the Testamentary Petition before this Court.

6 The Applicant has further stated that upon consultation with her Advocate, she was advised that without waiting for any interim or final order of the Supreme Court in the Transfer Petition, the Applicant should file caveat, affidavit in support of the caveat and vakalatnama appointing her Advocate. It was due to such advise that the present Chamber Summons was filed. It so happened that thereafter the Transfer Petition was rejected by the Supreme Court. Accordingly, the Applicant has sought for condonation of delay in taking out the present Chamber Summons and for taking the caveat with affidavit in support on record.

7 The learned Counsel for the Respondent has opposed the application on the ground that the Applicant was aware of the testamentary proceedings pending in this Court when the Transfer Petition was filed in the Supreme Court by the Applicant's sister i.e. on 26.04.2018. The transfer Petition was dismissed by the order of the Supreme Court dated 06.03.2019.

8 The learned Counsel for the Respondent has also stated that the Applicant was aware of the contents of the Will of the deceased as on 29.07.2017 one Mr. Raj Kumar Sabharwal addressed a letter to the

Applicant's sister and the Applicant for reading of the Testators Will on 09.08.2017 at Mumbai. The letter was acknowledged by the Applicant which shows that the Applicant was aware of the contents of the letter. He has accordingly submitted that the Applicant's case of knowledge of the Will and the fact that the citation was served much later, is belied by the facts as stated in the affidavit-in-reply.

9 It is noted that the Applicant has tendered affidavit in rejoinder to the affidavit-in-reply of the Petitioner dated 23.12.2020. The affidavit in rejoinder is taken on record.

10 Having considered the submissions, in my view the case has been made out by the Applicant for grant of relief sought for. What is material to note is when the citation issued by this Court was sought to be served on the Applicant on 17.12.2018, the Applicant was not present in India during that time. Service on the watchman cannot amount to service on the Applicant. Further, the delay in filing the caveat and affidavit in support thereof, has been satisfactorily explained by the Applicant including the fact that the Transfer Petition filed by the Applicant's sister in the Supreme Court was pending and which was ultimately dismissed on 06.03.2019. The present Chamber Summons has been taken out on 15.03.2019. The submission of the learned Counsel for

the Respondent of the knowledge of the Applicant, cannot be accepted as this Court has to consider the material date when the citation was served on the Applicant and not from the alleged reading of the Will or from the proceedings in the Supreme Court.

11 Hence, the following order :

- i) The delay in filing the caveat along with affidavit in support of the caveat, is condoned.
- ii) The caveat along with affidavit in support is taken on record.
- iii) The Caveator shall be heard in the Testamentary Petition No.1834 of 2017.
- iv) The Chamber Summons is disposed of in the above terms.

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
Date:
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(R.I. CHAGLA, J.)