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

CHAMBER SUMMONS NO.169 OF 2019
IN
CAVEAT (L) NO.157 OF 2019
IN
TESTAMENTARY PETITION NO.1843 OF 2017

Smt. Snehlata Ravinder Sethi	...Applicant
In the matter between	
Hemanshu Rajkumar Sabharwal	... Petitioner

Versus

Snehlata Ravinder Sethi	...Caveatrix
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Mr. Raj Patel, with Priyahass Jani with Niket Jani i/b. Vigil
Juris for the Applicant.

Mr. Nausher Kohli, Mr. Rushil Mathu and Mr. Santosh Mishra
i/b. Kochhar & Co. for the Petitioner.

CORAM : R.I. CHAGLA J

DATE : 26TH NOVEMBER 2021

ORDER :

1. Heard learned counsel for parties.
2. By this Chamber Summons the Applicant is seeking
condonation of delay of 88 days in filing caveat along with
Affidavit in Support thereof and for taking the caveat along

with the Affidavit in Support on record and for allowing the caveator to be heard in the matter.

3. The learned Counsel for the Applicant has tendered additional Affidavit in Reply dated 18th November, 2021 of the Applicant / Caveatrix in support of the Chamber Summons which is taken on record.

4. The reason given by the Applicant for delay is that the Applicant has always been staying in Delhi. The deceased Smt. Krishna Rani Baldev Raj Sabharwal was living with the Applicant. A partition suit had been filed by the Applicant on 3rd August, 2017 before the Delhi High Court. There were proceedings in that Suit including an Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the Plaint. The Application was dismissed by the Delhi High Court. Another Application was made by the Petitioner seeking permission for letting out certain properties forming part of the estate of the deceased. The Application was heard by the Delhi High Court and order was passed that till the final disposal of the Testamentary proceedings the rent received by letting out the properties will have to be deposited with the Delhi High

Court. The probate Petition was thereafter filed was taken cognizance of by the Delhi High Court and status quo was granted as to the title and possession of the properties which was the subject matter of the partition Suit till an appropriate interim order is passed in respect of the estate of the deceased in the probate proceedings.

5. The learned Counsel for the Applicant has stated that the Transfer Petition had been filed before the Supreme Court seeking transfer of the probate Petition from this Court to the Delhi High Court. It was during the transfer Petition pending hearing before the Supreme Court that the Applicant received a copy of the citation issued in the probate Petition on 17th December, 2018. The Applicant awaited the outcome of the transfer petition and it was only upon the dismissal of the transfer petition by the Supreme Court that the Applicant took steps to appoint an Advocate. The Applicant desired to appoint her own Advocate and not that of the Advocate of her sister. Thus there was delay in filing the Caveat and Affidavit in Support thereof and which has been explained by the Applicant in the Chamber Summons as well as additional Affidavit of the Applicant.

6. The learned Advocate appearing for the Petitioner has opposed the Chamber Summons. He has submitted that there is no satisfactory explanation given in either the Chamber Summons or in the additional Affidavit in Support of the Chamber Summons. He has submitted that the Applicant has sought to explain the delay by merely stating that the Applicant was awaiting the outcome of the transfer Petition before the Supreme Court and which ultimately came to be dismissed on 6th March, 2019. The Applicant in paragraph 12 of the Affidavit in Support has given no justification for the delay in filing the Caveat and Affidavit in Support thereof after the transfer Petition was dismissed by the Supreme Court. The only explanation given is that the Applicant was looking for an Advocate and had thought of engaging an Advocate, other than the Advocate appointed by her sister. According to the Applicant, from the date of the Supreme Court order i.e. from 6th March, 2019 till early April, the Applicant was unable to find a suitable Advocate. It was then that the Applicant's sister suggested to the Applicant to appoint the same Advocate as her, without wasting further time. He has submitted that there is no satisfactory explanation given thus for delay. In view thereof, the Chamber Summons is required to be dismissed.

7. Having considered the submissions, the Applicant has admitted that the delay is required to be calculated from 1st January, 2019 i.e. the expiry of 14 days from the Applicant being served with citation on 17th December, 2018 till the date of filing of the Chamber Summons on 13th May, 2019. However, considering that the Applicant is residing in Delhi and was pursuing the transfer Petition which had been filed in the Supreme Court and which sought transfer of the Probate Petition from this Court to the Delhi High Court, it is understandable that the Applicant had till the dismissal of the Transfer Petition by the Supreme Court not filed the Caveat and Affidavit in Support thereof in this Court. Satisfactory explanation has been given in the Chamber Summons as well as the additional Affidavit in Support thereof for such delay. It is also to be taken into consideration that the Applicant being a lay person was under bonafide impression that once the probate Petition would be transferred then the Applicant would have filed her caveat and Affidavit in Support of the caveat. The Applicant was also engaged in a partition Suit before the Delhi High Court.

8. It is true that there has been further delay in filing

the caveat and Affidavit in Support thereof, after the transfer Petition was dismissed by the Supreme Court. However, considering the fact that the Applicant being a resident of Delhi had found difficulty in appointing an Advocate in Mumbai and upon not being able to find a suitable Advocate for herself had no choice but to appoint the same Advocate as her sister is a satisfactory explanation for this delay. Having taken into consideration the satisfactory explanation given in the Chamber Summons as well as additional Affidavit in Support, the Chamber Summons required to be allowed. Hence the following order:-

(i) The delay in filing the Caveat along with Affidavit in Support thereof is condoned.

(ii) The office is directed to take the Caveat along with the Affidavit in Support on record.

(iii) The Caveator is permitted to be heard in the matter.

(iv) The Chamber Summons is disposed of in the above

terms with no order as to costs.

[R.I. CHAGLA J.]