

Sharayu Khot.

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

INTERIM APPLICATION NO. 1600 OF 2021

IN

CAVEAT (L) NO. 11892 OF 2021

IN

TESTAMENTARY PETITION NO. 2475 OF 2019

Mustafa Fazleabbas Hathiari

...Applicant

In the matter between

Iqbal Ibrahim Mestri

...Petitioner

And

Mustafa Fazleabbas Hathiari

...Caveator/Applicant

Ms. Rohini Pandit a/w Mr. Kevin Gala, Mr. Mehul Thakkar i/by
Rohini Pandit for the Applicant/Caveator.

CORAM : R.I. CHAGLA J

DATE : 13 October 2021

ORDER :

1. Heard learned Counsel for the Applicant.
2. Leave to carry out amendment in prayer clause of Interim Application for correction of the date of the Caveat mentioned as "23/06/2021" to "04/06/2021" is granted. Amendment shall be carried out forthwith.

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3. By this Interim Application, the Applicant is seeking condonation of delay of three days in filing Affidavit of support of the Caveat dated 23th June 2021 and pray for four weeks time to be granted to the Caveator to remove office objections. The Applicant is further seeking condonation of delay of 29 days in taking out the present Interim Application.

4. It is stated by the Applicant that on 19th May 2021, the Applicant and his sibling came to know from the newspaper Free Press Journal, Bombay the publication of a citation dated 19th May 2021 by the Advocate Siddhi Bhosale for the Petitioner. Accordingly, on or about 24th May 2021 the Applicant filed Caveat in this Court opposing the grant to the Petitioner of the Probate of the so called last will and testament dated 14th May 2018 of Smt. Zarina wife of Shrichand Sahani alias Zarina, daughter of A.A. Hathiari, deceased herein.

5. The Caveat has been served upon the Petitioner's Advocate on 24th May 2021. The Affidavit of Service has also been filed on 2nd June 2021.

6. It is further submitted by the Applicant that the Petitioner despite receipt of notice, failed to serve the Petition on the Applicant nor grant inspection of the original will and documents. On 5th June 2021 the Caveator filed the Affidavit in support of the Caveat opposing the grant of Probate Petition whilst reserving right to file Affidavit on the receipt of copy of the Petition and inspection of the original will of the deceased.

7. The objection has been raised by the department that there has been delay of three days in filing of the Affidavit in Support of the Caveat. This delay has been explained in the Interim Application. There is mention of another probate petition filed in the Court of Civil Judge (S.D.) Vasai, District Palghar under Section 218 of the Indian Succession Act, 1925 in respect of the another will and testament of the deceased dated 14th January 2004 which is pending till date. The Applicant has contacted his advocate who thereafter collected the documents and got information required by the Applicant which has been set out in the Affidavit in Support of the Caveat dated 4th June 2021. This took considerable time as stated by the Applicant to attain this information. Interim Application has been filed on 23rd June 2021. Accordingly, condonation of

delay has been sought.

8. I am satisfied with the averments in the Interim Application for condonation of delay in filing Interim Application as well as condonation of three days delay in filing the Affidavit in Support of Caveat dated 23rd June 2021. Hence, following order is passed :-

- (i) Delay of 29 days in filing the present Interim Application is condoned.
- (ii) Delay of 3 days in filing the Affidavit in Support of the Caveat dated 23rd June 2021 is condoned.
- (iii) Caveator is permitted to remove office objections within a period of four weeks from the date of this order.
- (iv) Interim Application is disposed of in the above terms.

[R.I. CHAGLA J.]