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

CHAMBER SUMMONS NO.131 OF 2019
IN
CAVEAT (L) NO.299 OF 2018
IN
TESTAMENTARY PETITION NO.1387 OF 2018

Maheshwari Vishvas Hande

...Applicant /
Caveatrix

In the matter between
Madhavi Mayuresh Kowarkar

...Petitioner

Versus

Maheshwari Vishvas Hande

...Caveatrix

Mrs. Tulsi Dhami, i/b. Mr. Vishal Kurtukade for the Applicant /
Caveatrix.

Mr.Rajesh Kachare, i/b. Sanjyoti Redkar for the Petitioner.

CORAM : R.I. CHAGLA J.

DATE : 18TH FEBRUARY, 2022

ORDER :

1. Heard learned Advocate appearing for the
Applicant / Caveatrix.

2. By this Chamber Summons, the Applicant has
sought condonation of delay of 130 days in filing the Affidavit in

Support of the Caveat dated 8th March, 2019 (Caveator had filed Caveat on 17th October, 2018) and for taking the Affidavit in Support on record.

3. There is no averment in the Affidavit in Support of the Chamber Summons to justify the delay in filing the Affidavit in Support of the Caveat. There is only a statement that the Caveatrix being the daughter of the deceased Manohar Dattaram Kowarkar is opposing grant of probate of the alleged last Will and Testament in favour of the Petitioner by filing Caveat.

4. Under Rule 402 of the Bombay High Court (Original Side) Rules, an affidavit in support of a caveat shall be filed within eight days from the date of the filing of the caveat, notwithstanding the Court vacations. Such affidavit shall state the right and interest of the caveator, and the grounds of the objections to the application. The copy of the Affidavit shall be served by the Caveator on the Petitioner or his Advocate on record. It is made clear in the said Rule that if such Affidavit is not filed within the prescribed time, Caveator shall not prevent the grant of probate or Letters of Administration. No such

Affidavit shall be filed after expiry of the said eight days without order of the Judge in Chamber.

5. The Caveatrix having failed to file the Affidavit in Support within the time prescribed under Rule 402 of the Bombay High Court (Original Side) Rules. The Caveatrix has also failed to give any explanation as to why there has been a delay in filing the Affidavit in Support of the Caveat beyond the prescribed period of 8 days from filing the Caveat. It appears that an application by way of Praecipe dated 28th December, 2019 was made requesting the Prothonotary and Senior Master that since the Affidavit in Support of Caveat is not filed by the Caveatrix within the prescribed time, the Caveat be dismissed. This has been listed on several occasions before the Additional Registrar (O.S.) / Prothonotary and Senior Master and on which dates neither Caveatrix nor her Advocate on record were present. Therefore on 12th March, 2018, the Additional Registrar (O.S.) directed the office to proceed with the matter and grant final opportunity to the Advocate on record of Caveatrix to remain present on next date. It was on 12th March, 2019, that the Caveatrix appeared for the first time and informed that on 8th March, 2019 the Affidavit in Support of

Caveat is filed. An objection was raised by the Advocate for the Petitioner on 30th March, 2019 that the Affidavit in Support of the Caveat cannot be taken on record as the same is not filed within the prescribed time under Rule 402 of the Bombay High Court (Original Side) Rules. The Caveatrix was well aware of the applicable Rule and the process and there is a deliberate failure and neglect to explain the delay in filing the Affidavit in Support of the Caveat.

6. In view thereof, the Chamber Summons for condonation of delay in filing Affidavit in Support of the Caveat which mentions the delay as 130 days is rejected. There shall be no order as to costs.

[R.I. CHAGLA J.]