

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

**INTERIM APPLICATION NO. 3150 OF 2021
IN
TESTAMENTARY PETITION NO. 2638 OF 2019**

Ajay Kishore Sadarangani ... Applicant/Orig. Petitioner

Versus

Shaku Kishore Sadarangani & Ors. ... Respondents/Orig. Caveators

Ms. Yasmin Bhansali a/w Prachi Singh and Ashutosh Agarwal i/b Yasmin Bhansali & Co. for the Applicant/Petitioner.

Mr. Siddha Pamecha a/w Raj Dani i/b Thodur Law Associates for the Respondents.

CORAM : R.I. CHAGLA, J.

DATED : 19th JANUARY, 2022.

(V.C.)

ORDER :

1 Heard the learned Counsel for the parties. The Interim Application which had sought necessary orders and directions including setting aside the caveat dated 14.02.2020 and affidavit in support thereof dated 20.02.2020, in view of the objections not being complied with by the Caveators, has become infructuous. The objections have been complied with pursuant to order dated 15.09.2021 passed by the Additional Prothonotary and Senior Master. The Caveator No.1 has complied with the objections and Caveator Nos.2 and 3 are stated in the

affidavit-in-reply filed by the Caveators to have complied with the objections and filed respective affidavits in support of the caveat on 25.10.2021.

2 The learned Counsel appearing for the Applicant/Petitioner has raised an issue with regard to Caveator Nos.2 and 3 filing their affidavits beyond the prescribed period of 8 days under Rule 402 of the Bombay High Court, Original Side, Rules. It is provided in Rule 402 of the Bombay High Court, Original Side, Rules that 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. She has submitted that there is no mention of any application for condonation of delay and that the affidavit in support of the caveat in any event cannot be filed beyond the period of eight days.

3 The learned Counsel for the Applicant/Orig. Petitioner states that though the Caveator No.1 has filed the caveat and affidavit in support within the period of eight days, as provided under Rule 402 of the Bombay High Court, Original Side, Rules and the objections have been complied with, the Testamentary Petition is not yet converted into a Testamentary Suit. She has submitted that necessary directions be passed by this Court to convert Testamentary Petition into Testamentary Suit.

4 It is stated by the learned Counsel for the Caveators that insofar as Caveator Nos.2 and 3 are concerned, the delay in filing the affidavit in support of the caveat was on account of the Covid-19 pandemic situation and he relies on the decision of the Supreme Court in Re-Cognizance: extension of period of limitation for filing the proceedings in the High Court as well as in the Supreme Court on account of the Covid-19 pandemic situation.

5 Having considered these submissions, it does appear insofar as the Interim Application is concerned, it has become infructuous in view of the objections having been complied with by the Caveators.

6 In view thereof, the Interim Application is disposed of as being infructuous. The rights and contentions of the parties insofar as the other submissions are concerned with regard to the filing of affidavit in support of Caveator Nos.2 and 3 and that such delay in filing of affidavit in support cannot be condoned under Rule 402 of the Bombay High Court, Original Side, Rules, are expressly kept open.

7 The Testamentary Department is directed to convert the Testamentary Petition into Testamentary Suit.

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(R.I. CHAGLA, J.)