

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 128 OF 2022**

Amin K. Merchant ... Petitioner

vs.

Mahiboob Esuf Alli (Deceased) ... Respondent

**WITH
WILL NO. 47 OF 2022
WITH
CAVEAT (LODGING) NO. 31200 OF 2022
IN
TESTAMENTARY PETITION NO. 128 OF 2022**

Mr. Sumeet Jagtap, i/b. Abhishek Walwaikar for petitioner.

Mr. Anand Mishra, i/b. Ashok Saraogi for caveator.

CORAM : MANISH PITALE, J.

DATE : 24th AUGUST, 2023

P.C. :

. In this petition, there are two caveators. The petitioner and the caveators have settled the disputes and affidavits of consent of the two caveators are placed before this Court. Alongwith the affidavit of the caveator Mahiboob Esuf Alli, copy of consent terms filed before the City Civil Court at Dindoshi, has been tendered.

2. The caveators have filed a suit before the aforesaid Court and the consent terms record that the caveators shall be withdrawing their caveats filed in the present petition and also, consent to grant probate of the will, as prayed by the petitioner.

3. At this stage, learned counsel for the petitioner submits that the prayer in the present petition would require amendment and that further specific

prayers need to be made on behalf of the petitioner. An application to that effect is tendered across the bar, signed by the petitioner as well as his advocate, seeking amendment to the prayer clause, in order to allow the petitioner to submit on record the original will dated 04.11.2015 and also, to take into consideration the consent affidavits given by the caveators for granting probate in favour of the petitioner in respect of the said will. The original will is also tendered.

4. Considering the fact that the parties have settled their disputes amicably, this Court is granting indulgence by taking consent affidavits of the two caveators on record, alongwith copy of the consent terms filed before City Civil Court at Dindoshi.

5. In the light of the aforesaid prayers made on behalf of the petitioner, in terms of the application for correction of prayer clause, tendered by the advocate representing the petitioner, permission is granted to appropriately amend the prayer clause of the petition. Amendment be carried out at the earliest.

6. In view of the above, the original will tendered by the advocate for the petitioner, is taken on record. The consent of the caveators is recorded and also, the fact that they wish to withdraw the caveats. In that light, there cannot be any impediment to allow the petition in terms of clauses 7 to 13 of the consent terms, copy of which is placed on record with the affidavits.

7. Accordingly, the petition is allowed and the probate of the will dated 04.11.2015 is granted.

8. The petition stands disposed of.

(MANISH PITALE, J.)

Priya Kambli