

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

INTERIM APPLICATION NO.1478 OF 2023

IN

SUIT NO.65 OF 2017

IN

PETITION NO.152 OF 2016

Kamini Gajendra Gupta ... Applicant

In the matter between:

Kamini Gajendra Gupta ... Plaintiff

Vs.

Asha Sanjay Sharma ... Defendant

Ms. Leela P. Ranga for Applicant / Plaintiff.

CORAM : MANISH PITALE, J.

DATE : OCTOBER 10, 2023

P.C. :

The plaintiff herein has filed the original testamentary petition for grant of letters of administration with Will dated 20.03.2010. The deceased was the mother of the plaintiff herein.

2. When the original testamentary petition was filed, it was specifically stated in paragraph 4 thereof that the deceased Sharda Maheshchandra Gupta was survived by her 6 daughters i.e. the plaintiff - Kamini Gajendra Gupta, Sneha Lata Mahesh Garg, Rohini Rajesh Agarwal, Nalini Vivek Mehta, Malini Ranjan Batheja and Asha Sanjay Sharma.

3. Along with the testamentary petition, consent affidavits of the plaintiff's four sisters i.e. Sneha Lata Mahesh Garg, Rohini Rajesh Agarwal, Nalini Vivek Mehta and Malini Ranjan Batheja were filed. They clearly stated in their affidavits that they had no objection to the letters of administration being granted in favour of the plaintiff.

4. It appears that only one sister i.e. Asha Sanjay Sharma opposed the prayer made in the petition. Caveat was filed on her behalf and consequently, the testamentary petition was converted into the present suit. An affidavit in support of the caveat was also filed, as a consequence of which, it was expected that the suit would be contested.

5. But the said Asha Sanjay Sharma i.e. the caveator, although represented by an advocate, did not come forward to give proper instructions to her advocate and the matter remained pending at that stage.

6. Subsequently, by an order dated 22.06.2022, this Court discharged the advocate appearing for the said Asha Sanjay Sharma and observed that she would be required to appoint a substitute advocate.

7. As the said defendant Asha Sanjay Sharma failed to take any steps in the matter, on 08.08.2023, this Court took note of the fact that the earlier advocate had been discharged and directed the plaintiff herein to serve the said defendant Asha Sanjay Sharma by e-mail as an alternate mode of service, particularly because she resides in USA and to file an affidavit of service in that regard.

8. This Court further observed that the defendant Asha Sanjay Sharma could file her affidavit-in-reply to the interim application, whereby the applicant / plaintiff has sought *ex-parte* order for grant of letters of administration. The said order further made it clear that if the defendant failed to file her affidavit-in-reply, this Court would proceed to pass appropriate order in the matter.

9. The applicant / plaintiff has filed affidavit of service, showing that the defendant Asha Sanjay Sharma was duly served by the e-mail on 08.08.2023.

10. Despite service, the defendant has failed to appear before this Court. Considering the aforesaid conduct of the defendant, the learned counsel appearing for the applicant / plaintiff is pressing for dismissal of the caveat and for appropriate orders in the present proceedings.

11. This Court has perused the material on record. It is clear that despite sufficient opportunity being granted to the defendant, she has failed to respond and despite this Court making it clear in the order dated 08.08.2023 that appropriate orders would be passed in her absence, she has chosen not to appear before this Court.

12. In view of the above, this Court is satisfied that the applicant / plaintiff has made out a case for dismissal of the caveat. Accordingly, the caveat is dismissed and the proceeding is converted back to the testamentary petition, as originally filed.

13. A perusal of the petition shows that along with the petition itself, the original petitioner filed affidavits of consent of the remaining four sisters. They have expressed their no objection to the prayer made in the present petition being granted.

14. Apart from this, the learned counsel appearing for the petitioner, on instructions, makes a statement that the petitioner is ready to deposit the share of the said Asha Sanjay Sharma with the Prothonotary and Senior Master of this Court, particularly because the Will of the deceased gave equal shares to all the six daughters, including Asha Sanjay Sharma. It is submitted that the share of the said Asha Sanjay Sharma would be deposited upon disposal of the assets of the deceased.

15. In view of the above, the petition is allowed in terms of prayer made therein. Accordingly, letters of administration shall be issued in favour of the petitioner. As per the statement made on behalf of the

petitioner, she shall deposit the share of Asha Sanjay Shama, upon sale of assets of the deceased, with the Prothonotary and Senior Master of this Court. The said Asha Sanjay Sharma would be at liberty to institute appropriate application / proceedings upon such share being deposited in this Court.

16. Interim Application also stands disposed of.

(MANISH PITALE, J.)

Minal Parab