

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 9 OF 1999**

Kisan Karbhari Gite ... Petitioner

vs.

Parvatabai Sakham Nagre ... Respondent/Original Petitioner

IN

TESTAMENTARY PETITION NO. 226 OF 1998

Mr. Shankar P. Thorat a/w. Mr. Gurunath B. Walawalkar for petitioner.

CORAM : MANISH PITALE, J.

DATE : 06th MARCH, 2024

P.C. :

1. On 23.01.2024, this Court passed an order recording that the present revocation petition pending since the year 1999, is listed on a specific direction given by this Court for listing old pending matters.

2. It was recorded that in this petition as far back as on 04.04.2017, this Court had passed an order recording that the respondent died about 4-5 years prior to the date of the said order and yet, the legal heirs were not brought on record. Appropriate steps were required to be taken and therefore, this Court had directed that the chamber summons may be taken out within six weeks.

3. In the order dated 23.01.2024, it was recorded that no such steps were taken by the petitioner. The learned counsel for the petitioner submitted that a last chance may be given to the petitioner for taking appropriate steps in the matter and accordingly, the present petition was kept for compliance today.

4. The learned counsel for the petitioner submits that he had sent repeated communications to the petitioner. But, there was no response. In

fact, after the order dated 23.01.2024 also, the learned counsel had reached out to the petitioner. An affidavit of service is tendered, which is taken on record. The said affidavit shows that the learned counsel for the petitioner had sent a letter dated 06.02.2024 by speed post to the petitioner, seeking instructions in the matter. It was specifically stated in the said letter that on earlier occasions also, the learned counsel had sought instructions from the petitioner and yet, there were no instructions forthcoming. The learned counsel once again asked the petitioner to give appropriate instructions, so that the present petition could be taken to its logical end.

5. The tracking report kept alongwith the affidavit of service shows that the said letter was delivered to the petitioner on 13.02.2024. Yet, the petitioner has chosen not to give any instructions to the learned counsel appearing for him.

6. In these circumstances, this Court finds that the petitioner does not appear to be interested in pursuing the present petition. The learned counsel for the petitioner submits that if the petition is dismissed, it may lead to injustice to the legal heirs of the deceased. But, this Court is of the opinion that if the petitioner has chosen not to pursue the present petition despite efforts made by the learned counsel for the petitioner, to seek instructions repeatedly, there is no alternative but to dismiss the present petition for non-prosecution. This Court records the fact that the learned counsel for the petitioner had made sufficient efforts to secure instructions to pursue the present petition and yet, the petitioner has chosen not to respond.

7. Therefore, on the sole ground of default of the petitioner, the present petition is dismissed for non-prosecution.

(MANISH PITALE, J.)