

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
APPEAL NO.60 OF 2023
IN
MISCELLANEOUS PETITION NO.60 OF 2016
IN
TESTAMENTARY PETITION NO.1353 OF 2012**

Vispy Keki Dalal

... Appellant

V/s.

Tanaz Rumi Dalal & Anr.

... Respondents

Mr. Agnel Carneiro a/w Mr. Shahvir Dastur i/by Mulla & Mulla and
Craigie Blunt & Caroe for the Appellant.

Mr. Cyrus Ardesbir, Mr. Punit Damodar, Ms. Nikita Vardhan and Ms.
Nidhi Pathak i/by Kanga & Company for the Respondents.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 27th FEBRUARY 2024

P.C. :

The present Appeal impugns an order dated 18th
January 2018, dismissing the captioned Miscellaneous Petition
filed by the Appellant seeking revocation of the Probate granted

by this Court on 12th December 2012 in respect of the Last Will and Testament of one Rumi Keki Dalal (*"the Deceased"*).

2. The Appellant is the brother of the deceased, and the Respondents are the children of the deceased who had filed the caption Testamentary Petition in which probate of the last will and testament of the deceased came to be granted.

3. The Deceased passed away on 6th April 2012 leaving behind his Last Will and Testament dated 11th November 2005. As per the provisions of the Indian Succession Act, 1925 (*"Succession Act"*), the only legal heirs and next of kin of the Deceased on his death were his late mother Gool Keki Dalal and his children Tanaz Rumi Dalal and Neville Rumi Dalal (*"the Respondents herein"*).

4. On 14th August 2012 Respondent No.1 filed the captioned Testamentary Petition seeking Probate of the Last Will and Testament of the Deceased. It is not in dispute that (a) no

citation was served upon the Appellant and (b) Respondent No. 2 and the mother of the Deceased consented to the grant of Probate in respect of the said Will. It was in these circumstances that this Court on 12th December 2012 granted Probate in respect of the said Will.

5. Thereafter, the mother of the Deceased i.e., Gool Keki Dalal passed away on 26th February 2013. The Appellant then on 16th April 2016 filed the captioned Miscellaneous Petition seeking revocation of the Probate on the ground that the consent of his mother, viz., Gool Keki Dalal was obtained by undue influence exerted upon her by the Respondents.

6. The Miscellaneous Petition came to be dismissed by Impugned Order. It is thus that the present Appeal has been filed by the Appellant who is the brother of the Deceased.

7. Mr. Carneiro, Learned Counsel appearing on behalf of the Appellant submitted that the Learned Judge had erred in dismissing the Miscellaneous Petition on the ground that the

Petitioner did not have a caveatable interest. He submitted that to seek revocation of probate under Section 263 of the Succession Act it was not necessary to have a caveatable interest but what was essential was that a person so applying should have a substantial interest in the estate of the deceased. In support of his contention, he placed reliance upon the following judgements of the Hon'ble Supreme Court in the case of *Elizabeth Antony Vs. Michel Charles John Chown Lengera*¹ and *G. Gopal Vs. C. Baskar And Others*².

8. Mr. Carneiro then pointed out that the Appellant was the sole legatee under the Will of his late mother i.e. Gool Keki Dalal. He submitted that since the consent of his late mother to the probate of the Will of the deceased was obtained by undue influence and coercion, the same affected his interest in her estate. He pointed out that it was basis this that the Appellant sought to challenge the grant of probate in respect of the Will of the deceased and thus the Miscellaneous Petition was

¹ (1990) 3 Supreme Court Cases 333

² (2008) 10 Supreme Court Cases 489

maintainable under Section 263 of the Succession Act. He pointed out that this aspect had been completely overlooked by the Learned Judge in the Impugned Order.

9. *Per contra*, Mr. Ardeshir, Learned Counsel appearing on behalf of the Respondents pointed out that the Appellant had absolutely no locus to seek revocation of the Probate granted by this Court. He pointed out that the only ground on which revocation was sought was that the consent of the mother of the Deceased had been obtained by exerting undue influence. He submitted while this ground was itself *ex facie* untenable, since the Respondents both live overseas and the mother of the Appellant and the Deceased infact lived with the Appellant hence the occasion of the Respondents exerting any undue influence upon the mother of the deceased i.e. Gool Keki Dalal did not arise.

10. He then pointed out that the ground of undue influence was the sole ground of challenge to the probate. He submitted

that the Appellant had not put forth any other ground of challenge much less shown what interest, let alone substantial interest the Appellant had in the estate of the deceased. He submitted that the Appellant's challenge was solely on the ground that the Appellant was the legal heir of his late mother and nothing more.

11. Mr. Ardeshir then submitted that the real reason the Appellant had sought revocation was because the Respondents had challenged the Will of the Appellant's late mother i.e. Gool Keki Dalal. He submitted that this was apparent from the fact that the application for revocation was filed three years after his late mother passed. He thus submitted that the Appeal deserved to be dismissed.

12. After having heard Learned Counsel we find that the Appeal is entirely devoid of merit. We find that even if we were to accept the case of the Appellant, the Appeal is devoid of merit and requires to be dismissed for the following reasons, viz.

- A. The sole ground on which revocation was sought was that the consent of the Appellant's mother i.e. Gool Keki Dalal was obtained by undue influence, which in turn affected the Appellant's rights under the will of his late mother i.e. Gool Keki Dalal. Therefore, it is clear that the interest of the Appellant which is stated to be affected is in the estate of his late mother and *not in the estate of the deceased*. Given this, we find that the judgments relied upon by the Appellant, in the case of ***Elizabeth Antony*** (supra) and ***G. Gopal*** (supra) would be of no assistance to the Appellant. Therefore, the Appellant would not in our view have any locus to seek revocation of the probate of the Will of the deceased under the provisions of Section 263 of the Succession Act given that it is the Appellant's own case that his interest in the estate of his late mother was affected by the grant of probate and not any interest in the estate of the deceased.

- B. *Also*, we must note that probate of the will of the deceased was granted in the year 2012. If infact the Appellant had any interest in the estate of the deceased independent of his late mother or believed that the consent of his late mother was obtained by undue influence nothing precluded the Appellant from filing a Petition for revocation earlier i.e. at the time when the Appellant alleged the undue influence was exerted. The Appellant has admittedly did not do so. The Appellant has instead filed the captioned Miscellaneous Petition after over four years from the date of the grant of probate. There is absolutely no explanation for this delay. The gross and unexplained delay to our minds lends credence to the Respondents' contention that the captioned Miscellaneous Petition has been filed solely for ulterior reasons.
- C. *Additionally*, another fact that we must bear in mind is that as per the provisions of Section 50 and 51 of the

Indian Succession Act, as applicable to Parsis, the admitted position is that the Appellant would not stand to inherit any portion of the estate of the deceased in terms thereof. It is only the Respondents and the late mother of the deceased who would inherit in terms of Section 50 and 51 of the Indian Succession Act. Thus, the Appellant being a stranger to the estate of the deceased and all those who had any interest in the estate of the deceased having granted their respective consents, we do not see how the Appellant could maintain such a Petition.

13. Thus, we find no infirmity in the Impugned Order. Hence, the Appeal is accordingly dismissed.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)