

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

**INTERIM APPLICATION NO. 1175 OF 2024
IN
CAVEAT (L) NO. 6122 OF 2023
IN
TESTAMENTARY PETITION NO. 656 OF 2023**

Trupti Hitesh Shethia ... Applicant

In the matter between :

Ansuya Harish Shethia ... Petitioner

Versus

Trupti Hitesh Shethia ... Defendant/
Caveatrix

Harish Premji Shethia alias

Harishbhai Premji Shethia alias

Harishbhai Premji Thacker ... Deceased

Adv. Triveni Jani i/by Vikas Thakkar for the Petitioner.

Mr. Uttam S. Rane i/by Nilesh Joshi for Caveatrix/Applicant.

CORAM: MANISH PITALE, J.

DATE : 19th APRIL 2024

P.C. :

. Heard learned counsel for the parties.

2. By this application, the applicant/caveatrix seeks condonation of delay of 198 days in filing affidavit in support of the caveat.

3. The application is opposed and in the reply affidavit, the petitioner has submitted that the applicant has failed to

demonstrate sufficient cause for condonation of delay. The statement made in the application that the applicant visited United States of America (USA) between June 2023 and November 2023, is also disputed.

4. The applicant filed a rejoinder affidavit in order to support the assertion made in the application as regards the applicant having travelled to the USA between June 2023 and November 2023.

5. This Court has perused the material on record. The caveat in the present case was filed in March 2023, even before the citation was served on the caveatrix. It is the case of the applicant/caveatrix that she travelled to the USA between 20th June 2023 and 4th November 2023. Copies of air tickets were filed with the application. Along with the rejoinder affidavit, photocopies of the relevant pages of the passport have been placed on record, which indeed show immigration stamps to indicate that the applicant left for USA on 20th June 2023 and returned back on 4th November 2023.

6. It is the case of the applicant that in the interregnum, the papers were served at the address of the applicant's sister and not at her address. It is further stated that upon returning from USA, she took necessary steps for preparation of the affidavit in support of caveat, due to which certain time was consumed, leading to the aforesaid delay of 198 days. It is submitted that if the service of

citation is found to be defective, it cannot be said that the affidavit in support of the caveat suffers from delay of 198 days. It appears that the affidavit in support of the caveat was filed on 26th January 2024 and the present application was filed on 31st January 2024. It is further brought to the notice of this Court that in the meantime certain orders were passed by the officials of the testamentary department periodically granting time to the applicant to remove defects, the primary defect being absence of affidavit in support of the caveat. In this connection, reference is made to order dated 2nd November 2023 passed by the Prothonotary and Senior Master of this Court and also an order dated 14th December 2023, further granting extension till 4th January 2024. Attention is also invited to an order dated 3rd January 2024, passed by this Court, further granting extension of four weeks to remove the objections.

7. It is vehemently submitted on behalf of the original petitioner that even if the pleadings and documents filed on behalf of the applicant are to be taken into consideration, sufficient cause to condone the delay is not made out. It is submitted that the applicant/caveatrix has been indulging in delaying tactics only with a view to frustrate the progress of testamentary petition. It is submitted that the address given in the caveat filed in March 2023, shows that the service of citation cannot be faulted. It is submitted that the applicant never communicated the address at which she claims to have shifted after having left the matrimonial house. It is

further submitted that after having returned from USA on 4th November 2023, immediate steps were not taken on behalf of the applicant and the instant application for condonation of delay in filing the affidavit in support of the caveat was filed only after the matter was mentioned before this Court on behalf of the original petitioner. Reliance was placed on judgments of the Supreme Court in the case of *Majji Sannemma alias Sanyasirao v/s. Reddy Sridevi & Ors.*, (2021) 18 SCC 384 and *Sheo Raj Singh (deceased) through Legal Representatives & Ors. v/s. Union of India & Anr.*, (2023) 10 SCC 531 and an order dated 25th February 2022 passed by the Supreme Court in SLP Nos.2054-2055 of 2022 (*Lingeswaran Ect. v/s. Thirunagalingam*).

8. This Court has heard the learned counsel for the rival parties and perused the material on record.

9. The applicant/caveatrix in the present case filed caveat even before the citation was served on her. The documents and the material placed on record indeed show that the applicant left for USA on 20th June 2023 and returned on 4th November 2023. The documents filed on record show that the citation appears to have been served on the address of the sister of the applicant. In that sense, there is substance in the contention raised on behalf of the applicant that the papers were not actually served on her and that in any case, at that point in time, she was in the USA.

10. Having returned from USA, it is the case of the applicant

that she pursue the matter through her advocate. The record shows that orders were passed on 2nd November 2023 and 14th December 2023, granting extension of time till 4th January 2024 to the applicant to take appropriate steps in the matter. The applicant was required to file affidavit in support of the caveat within the said period of time. On 3rd January 2024, the learned counsel for the applicant mentioned the matter before this Court and a further extension of time of four weeks from 3rd January 2024 was granted for removing the office objections.

11. Thereafter, on 18th January 2024, the proceedings were listed before this Court, at the behest of the petitioner. It was specifically contended by the learned counsel for the petitioner on 18th January 2024 that the petitioner was a senior citizen, aged about 80 years. It was submitted that the caveatrix was indulging in delaying tactics by not removing office objections and in that light, appropriate directions were sought from this Court on the said date, the learned counsel for the caveatrix assured this Court that the office objections will be removed and it was indicated that the caveatrix intended to settle the dispute.

12. It appears that only thereafter on 26th January 2024, the affidavit in support of the caveat was filed and thereafter, the present application was filed on 31st January 2024.

13. This Court finds that the delay in filing the affidavit in support of the caveat has been partly explained, due to the fact

that the applicant was in USA between 20th June 2023 to 4th November 2023. Having returned from USA, she was required to take appropriate steps to file affidavit in support of the caveat, as it appears to be the only defect concerning the caveat, already lodged in March 2023. It is an admitted position that the caveat was filed even before the citation was served on her.

14. The citation was admittedly not served at the address on which the applicant is residing, although it is the case of the petitioner that the citation was served on the last known address of the applicant. Be that as it may, it appears that citation and the papers were actually not served on the address on which the applicant was residing. Besides, the date of service is shown when the applicant was in USA.

15. Record also shows that as per orders dated 2nd November 2023 and 14th December 2023, the applicant was granted extension of time till 4th January 2024 to take appropriate steps in the matter. The proceedings were mentioned on 3rd January 2024, on her behalf and a further extension of time for four weeks was granted. Eventually, the affidavit in support of the caveat was filed on 26th January 2024 and the present application came to be filed on 31st January 2024.

16. Considering the orders passed by the Prothonotary and Senior Master of this Court in November 2023 and December 2023, read with the order passed by this Court on 3rd January

2024, it can be said that eventually the affidavit in support of the caveat was filed within the extended period of time. The learned counsel appearing for the applicant submitted that the affidavit in support of the caveat could be drafted only after the papers were made available. To that extent, the explanation given on behalf of the applicant can be accepted.

17. Nonetheless, considering the series of orders brought to the notice of this Court, an impression is gathered that the affidavit in support of the caveat and the present application were filed at a point in time when extensions given by the Prothonotary and Senior Master and this Court, were in operation. The caveatrix, as a litigant, may not be aware about the nitty-gritty of the procedural aspects of the matter and considering her absence from this country for a substantial period of time, this Court is inclined to allow the present application. Nonetheless, the fact that the proceedings were mentioned on behalf of the petitioner before this Court in January 2024 to expedite the process, leaves this Court with the impression that procedure was used in such a manner on behalf of the applicant that it did cause some inconvenience to the petitioner, who is a senior citizen. In that regard a direction can be issued to adequately compensate the original petitioner. Although there is nothing to indicate that the parties made any attempts to settle the dispute, considering the relationship between the parties, this Court had observed in the order dated 18th January 2024 that the possibility of settlement

could be explored by the parties before the next date of listing.

18. Insofar as the judgments relied upon by the learned counsel for the original petitioner are concerned, the said judgments can be distinguished on facts. In all the three cases, the Court came to a considered conclusion that sufficient cause for condonation of delay was not made out. Such findings were necessarily rendered on the facts and circumstances of the case. Besides, in all the three cases, the extent of delay was far more and it remained unexplained.

19. In the facts of the present case, this Court is of the opinion that the said judgements have no application.

20. In view of the above, the application is allowed, delay is condoned and the department is directed to take the affidavit in support of the caveat on record, subject to the caveatrix paying cost of Rs.10,000/- to the original petitioner within four weeks from today.

21. The proof of having paid such costs shall be placed on record within four weeks from today.

MANISH PITALE, J.