

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.76 OF 2019
IN
TESTAMENTARY SUIT NO.223 OF 2017
IN
PETITION NO.1569 OF 2017

Anjali Anand Udeshi ... Applicant / Petitioner / Plaintiff

In the matter between:

Anjali Anand Udeshi ... Petitioner / Plaintiff

Vs.

Prashant Harish Ashar ... Defendant / Caveator

WITH
INTERIM APPLICATION (L) NO.41014 OF 2022
IN
TESTAMENTARY SUIT NO.223 OF 2017
WITH
NOTICE OF MOTION NO.1627 OF 2017
WITH
INTERIM APPLICATION NO.1174 OF 2022
IN
SUIT NO.509 OF 2017

Mr. Vivek Punjabi a/w. Ms. Gauri Bhosale i/b. Ms. Kinnari Mehta for Plaintiff in TS/223/2017.

Mr. Nirman Sharma a/w. Mr. Ansh Karnawat i/b. Mr. Jayendra Shah for Defendants.

CORAM : MANISH PITALE, J.

DATE : MARCH 26, 2024

P.C. :

. By this notice of motion, the plaintiff (petitioner) is seeking dismissal of caveat on the ground that even if the affidavit filed in support of the caveat is to be taken into consideration, no ground is made out for continuing the caveat on record.

2. It is submitted that the caveator in the short affidavit has not effectively challenged the subject Will, and therefore, the caveat deserves to be dismissed at this stage itself.

3. The learned counsel appearing for the plaintiff invited attention of this Court to the affidavit filed in support of the caveat and submitted that even if the contents of the said affidavit are to be accepted as it is, the caveator has not been able to make out any effective ground for maintaining the caveat in order to oppose grant of probate. He placed reliance on judgement of this Court in the case of *Raj Kumar Mittal and others Vs. Rajesh Venkateshwar Somani*, **2017 SCC OnLine Bom 10263**.

4. On the other hand, the learned counsel appearing for the caveator submits that the said affidavit in support of the caveat was filed on 01.11.2017 and in paragraph 4, the caveator had specifically reserved right to file a detailed supplementary affidavit post inspection of the records and proceedings by the advocate representing him.

5. It is submitted that even if the said affidavit in support of the caveat is taken into consideration, the contents of paragraphs 2 and 4 sufficiently make out grounds for opposing the grant of probate. It is submitted that the caveator has specifically raised question about the soundness of mind of the deceased at the time of executing the Will. The learned counsel places reliance on order dated **06.10.2009** passed by the Division Bench of this Court in the case of *Ashok Kumar Khetan Vs. Rajkumari Ramnath Harlalka and another* (**Appeal No.85 of 2009**).

6. This Court has perused the contents of the affidavit in support of the caveat. Although, it appears to be a short affidavit consisting of only four paragraphs, the caveator has specifically stated in paragraph 2 that at the time of execution of the alleged Will, the deceased did not have

sound and disposing state of mind. In paragraph 4 of the affidavit, the caveator has stated that he strongly opposed grant of probate to the purported Will of the deceased. In the very same paragraph, the caveator has stated that the advocate representing him is to take inspection of the record and thereafter, he would be filing a detailed supplementary affidavit.

7. This Court is satisfied that the contents of the said affidavit filed in support of the caveat sufficiently express the grounds on which the caveator intends to oppose grant of probate. The tenor of the affidavit demonstrates that not only the validity of the Will but also the soundness of mind of the deceased is specifically challenged in paragraph 2.

8. Reliance placed on behalf of the plaintiff on the judgement of this Court in the case of **Raj Kumar Mittal and others Vs. Rajesh Venkateshwar Somani** (*supra*), cannot take her case any further, for the reason that the said judgement refers to the scope of jurisdiction of a probate court and also emphasizes that disputes regarding title cannot be decided by a probate court. Even if the observations in paragraphs 7 and 11 of the said judgement are taken into consideration, the same cannot lead to a conclusion, in the facts of the present case, that the caveat deserves to be dismissed or discharged. The observations made by the Division Bench of this Court in the case of **Ashok Kumar Khetan Vs. Rajkumari Ramnath Harlalka and another** (*supra*) indicate the contents of an affidavit in support of the caveat that can lead to sufficient ground for opposing the subject Will.

9. Applying the said observations of the Division Bench, this Court is of the opinion that the caveator, in the present case, has indeed raised sufficient grounds to indicate opposition to the grant of probate.

10. Hence, this Court finds that the notice of motion is without any

merit and it deserves to be dismissed. Accordingly, Notice of Motion No.76 of 2019 is dismissed.

11. At this stage, the learned counsel appearing for the caveator submits that since the caveator had specifically reserved his right to file the supplementary affidavit post inspection of the record, this Court may consider permitting the caveator to place such affidavit on record, which is kept ready.

12. The learned counsel for the plaintiff has opposed the said contention, on the basis that the inspection was admittedly carried out, as far back as on November, 2017 and the supplementary affidavit dated 28.02.2024 is sought to be placed on record.

13. This Court is of the opinion that a testamentary court is a court of conscience, and therefore, any material that assists the Court in enquiring into the truth of the matter can be permitted to be placed on record.

14. Accordingly, the caveator is permitted to place the supplementary affidavit on record within one week from today.

15. The proceedings shall now be listed for framing of issues on 17.04.2024, High on Board.

(MANISH PITALE, J.)

Minal Parab