

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

TESTAMENTARY PETITION NO. 2613 OF 2019

WITH

WILL NO. 1001 OF 2019

WITH

CAVEAT (LODGING) NO. 39 OF 2020

IN

TESTAMENTARY PETITION NO. 2613 OF 2019

Jayamangala Balabhadra Joshi

...Deceased

Deepti Joshi Dave & Anr.

...Petitioners

**Versus**

Nikita Balabhadra Joshi & Anr.

...Caveators

WITH

INTERIM APPLICATION NO. 1496 OF 2020

(Not on board)

\* \* \*

- Mr. Vishal Talsania a/b Mr. Kaushal Parsekar a/w Ms. Ms. Widisha Agarwalla i/b Desai Desai Carrimjee & Mulla, for Petitioners.
- Mr. Kalpesh Joshi a/w Ms. Nisha Shah i/b Kalpesh Joshi Associates, for Caveators.

\* \* \*

**CORAM : MANISH PITALE, J.**

**DATE : 27<sup>th</sup> FEBRUARY, 2024.**

**P. C. :**

1. Interim Application No. 1496 of 2020, is not on board. It is taken on board.
2. By the said application, the caveators are seeking condonation of delay of 16 days in filing affidavit in support of the caveat.
3. The present proceedings have been circulated today at the

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behest of the petitioners in the probate petition. The learned counsel appearing for the petitioners submits that the caveat was lodged, as far back as in January, 2020 and the aforesaid affidavit in support of the caveat is dated 20<sup>th</sup> February, 2020.

4. It is brought to the notice of this Court that the advocates representing the petitioners had specifically written to the advocates representing the caveators as far back as on 25<sup>th</sup> February, 2020, requesting for a copy of the caveat and the affidavit filed in support thereof. A copy of the said letter dated 25<sup>th</sup> February, 2020, is tendered by the learned counsel appearing for the petitioners, which is taken on record and marked "X" for identification.

5. It is further submitted by the petitioners that thereafter, the petitioners demanded copy of the caveat as well as the affidavit in support thereof repeatedly, but the same were not served. As a consequence of the caveat being lodged by the caveators, the department also did not move further in the matter and the probate petition has been lying in the aforesaid state since the year 2019.

6. It is submitted that a copy of the application for condonation of delay in filing the affidavit in support of the caveat, as also copy of the affidavit in support of the caveat was served last night on the advocates representing the petitioners. A grievance is made in respect of the aforesaid conduct of the caveators and it is submitted

on behalf of the petitioners that this Court may take cognizance of the same.

7. The learned counsel appearing for the caveators admits to the position that the affidavit in support of the caveat and the application seeking condonation of delay in filing the same were placed on record of this Court in February, 2020. It is submitted that thereafter, Covid-19 pandemic hit the nation and therefore, the matter remained at that stage.

8. This Court has considered the rival submissions in the backdrop of the record of the present case. This Court is of the opinion that when the aforesaid application for condonation of delay in filing the affidavit in support of the caveat was filed, a copy thereof ought to have been served on the advocates representing the petitioners in advance. In any case, the copies should have been served immediately upon the aforesaid letter dated 25<sup>th</sup> February, 2020 addressed on behalf of the petitioners, specifically asking for copies of the caveat and the affidavit in support thereof. It is an admitted position that the copies were not served on the petitioners or her advocates. Even if, the period consumed by the Covid-19 pandemic is taken in to consideration, there is no explanation on the part of the caveators as to why the copies were not served on the petitioner or her advocate. It appears that since the caveat was

lodged in January, 2020, the probate petition has not progressed further at all. It has been listed today only when the learned counsel for the petitioners mentioned and got the proceeding circulated. It is also a matter of record that the copies were eventually served on the advocates representing the petitioners, only last night. This depicts a sad state of affairs.

9. Hence, even if the application seeking condonation of delay in filing the affidavit in support of the caveat is to be considered, this Court is inclined to impose appropriate costs on the caveators.

10. A perusal of the application seeking condonation of delay in filing the affidavit in support of the caveat shows that the delay has essentially occurred because of the personal difficulty of the advocate on record. The reason has been stated in paragraph No. 5 of the application. Considering the aforesaid statement made in the application, this Court is inclined to condone the delay.

11. Nonetheless, in the light of the observations made hereinabove, the application is allowed in terms of prayer clause (a), subject to the caveators paying costs of 20,000/- to the petitioners within a period of two weeks from today.

12. The caveators shall furnish proof of having paid the aforesaid amount towards costs to the petitioners, whereupon, the

affidavit in support of the caveat shall be taken on record.

13. The department shall now forthwith proceed to register the proceeding as a Testamentary Suit.

14. It shall be listed on **05<sup>th</sup> April, 2024**, for framing of issues.

15`. Interim Application No. 1496 of 2020, is disposed of.

**(MANISH PITALE, J.)**