

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 2201 OF 2020
IN
TESTAMENTARY PETITION NO. 707 OF 2018**

Hootoxi Ghosal	...	Applicant/Petitioner
vs.		
Sugoto Ghosal	...	Respondent/Caveator
and		
Subroto Ghosal	...	Deceased

Mr. Shashwat Rai, i/b. Keystone Partners for applicant/petitioner.

**CORAM : MANISH PITALE, J.
DATE : 06th FEBRUARY, 2024**

P.C. :

. Heard learned counsel for the applicant. By this application, the applicant is seeking discharge of the caveat, on the ground that the caveat was filed beyond the time period specified in Rule 401 of the Bombay High Court (Original Side) Rules, 1980 and no affidavit in support of the caveat, is placed on record in terms of Rule 402 thereof.

2. This application was listed on 11.01.2024, when a last chance was given to the caveator to appear before this Court to oppose the present application. It is relevant to note here that the caveator is represented by an advocate. Yet, neither the advocate, nor the caveator is present in Court today.

3. The learned counsel for the applicant submitted that in the present case, the caveat suffers from a delay of about 448 days i.e. one year and two months. Admittedly, there is no application filed for condonation of delay of 448 days in filing the caveat. Since, the caveat, in that sense, has not been formally taken on record, even the subsequent compliance of filing the

affidavit in support of the caveat within the period of 8 days, has not been satisfied. Reference is made to Rules 401 and 402 of the aforesaid Rules and reliance is placed on the judgment of this Court in the case of *Mahesh Atalraikeswani vs. Suresh Atalrai Keswani* [(2013) 5 Mh.L.J. 825].

4. This Court has considered the material on record. In the said judgment, this Court has categorically held that the requirements of Rules 401 and 402 of the aforesaid Rules, are mandatory and in case of failure in compliance with the said Rules, the caveat deserves to be discharged.

5. The facts and the material on record clearly shows that the caveator has failed to fulfill the mandatory requirements of Rules 401 and 402 of the aforesaid Rules. Hence, the application deserves to be allowed.

6. Accordingly, the caveat is discharged and the department is directed to proceed further in the present probate petition, in accordance with law.

7. In this application, the applicant has also prayed for amendment of the original schedule to the probate petition and the proposed amendment is annexed to the present application. This Court has perused the same and in the interest of justice, the applicant is permitted to carry out the amendment, as per Schedule I annexed to the present application.

8. The amendment be carried out within two weeks from today. Re-verification is dispensed with.

9. The application stands disposed of.

(MANISH PITALE, J.)