

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

INTERIM APPLICATION NO.86 OF 2023

IN

CAVEAT (L) NO.3624 OF 2020

Arnaz Romolo Francorsi ... Applicant

In the matter between:

Arnaz Romolo Francorsi ... Petitioner

Vs.

Percy N. Karanjia ... Caveator

and

Khushroo Naoroji Karanjia ... Deceased

WITH

INTERIM APPLICATION NO.245 OF 2023

IN

CAVEAT (L) NO.3624 OF 2020

WITH

WILL NO.943 OF 2019

WITH

TESTAMENTARY PETITION NO.2467 OF 2019

Mrs. Armaity S. Khushrushahi a/w. Ms. Nerissa M. Almeida for Applicant in I.A.No.86 of 2023 and for Petitioner..

Ms. Aparajita Chandra for Caveator / Applicant in I.A.No.245 of 2023.

CORAM : MANISH PITALE, J.

DATE : MAY 03, 2024

P.C. :

. These two applications are moved by the rival parties.

2. While Interim Application No.245 of 2023 is filed by the caveator praying for condonation of delay of 290 days in lodging the caveat and filing the affidavit in support thereof, Interim Application No.86 of 2023 is filed on behalf of the petitioner praying that delay in filing the caveat may not be condoned and that therefore, the caveat be dismissed, leading

to issuance of the grant.

3. The petitioner has filed the present petition for grant of probate of a Will said to have been executed by the deceased testator. In the present case, citation was served upon the caveator on or around 25.11.2019. It is a matter of record that the caveat, affidavit in support of caveat and application for condonation of delay in filing the caveat along with the affidavit were all filed on 24.09.2020. It is also a matter of record that the same suffer from delay of 290 days.

4. Since the caveator failed to take appropriate steps to have the application for condonation of delay registered and listed before this Court, the petitioner was constrained to move Interim Application No.86 of 2023 praying for a direction not to condone the delay and to dismiss the caveat so that the probate could be granted.

5. Both these applications came up for consideration before this Court on 24.04.2024 and upon hearing the learned counsel for the rival parties, this Court called for the report from the department. Accordingly, the Testamentary Registrar submitted report dated 30.04.2024 with regard to the application for condonation of delay filed on behalf of the caveator and the manner in which it was processed in the department.

6. The report shows that after the application was filed on 24.09.2020, the scrutiny officer of the department raised objections on 20.10.2020. On 12.03.2021, some of the objections were removed by the clerk but the same could not be pointed out to the scrutiny officer. It is further recorded that on 19.01.2023, advocate for the caveator removed the last objection, as a consequence of which, the application for condonation of delay was registered on the same day as Interim Application No.245 of 2023. It is further reported that in the meanwhile,

the petitioner had already filed Interim Application No.86 of 2023 for dismissal of the caveat claiming that the delay did not deserve to be condoned.

7. Interim Application No.86 of 2023 came up for consideration on 10.01.2023, when this Court (Coram : Arif S. Doctor, J.) observed that the request made on behalf of the caveator for taking instructions in the matter was completely unjustified as the caveator did have ample time to remove office objections. In that light, the application filed by the petitioner was adjourned to 20.01.2023. The report of the testamentary registrar shows that thereafter, the application filed by the petitioner was adjourned from time to time till both the applications were taken up for consideration on 24.04.2024, when this Court called for the aforesaid report from the department.

8. The learned counsel appearing for the caveator submitted that the statement made in the report of the testamentary registrar that only some objections were removed on 12.03.2021 is disputed because the advocate for the caveator had removed all the objections pointed out by the scrutiny officer and the advocate had also signed the proceedings. It was submitted that the statement that the last objection was removed on 19.01.2023 is not borne out from the record. It was further submitted that upon the application of the caveator being registered on 19.01.2023, it was listed from time to time but the same could not be taken up for consideration by this Court due to paucity of time. On this basis, it was claimed that the caveator had taken necessary steps for consideration of the application for condonation of delay.

9. For the reasons stated in the application for condonation of delay in filing the caveat and the affidavit in support thereof, the learned counsel for the caveator relied upon the contents of the application. It was submitted that due to old age and health issues, the caveator took

some time in giving instructions and transmitting papers to his advocates in India for taking appropriate steps in the matter. It is claimed that *Covid-19* pandemic also contributed towards delay in taking appropriate steps in the matter. The learned counsel for the caveator submitted that since the caveator is a senior citizen suffering from health issues, this Court may consider condoning the delay, so that the caveat along with the affidavit in support thereof is taken on record. She submitted that the petitioner will not suffer any prejudice and if delay is condoned, the matter can be contested on merits.

10. On the other hand, the learned counsel appearing for the petitioner submitted that the contents of the report submitted by the testamentary registrar clearly demonstrates the fact that the caveator simply filed the caveat along with the affidavit in support and the application for condonation of delay and thereafter did not take any steps with alacrity, only to delay the proceedings and to harass the petitioner who is herself a senior citizen. It was submitted that even in the application for condonation of delay, the reasons stated are casual and advantage is sought to be taken of the *Covid-19* pandemic, which came only in March, 2020. It was submitted that even the caveator admitted that the citation was served on 25.11.2019 and that therefore, there is no explanation at all for justifying the delay in filing the caveat before this Court. It was submitted that if delay is condoned, the tactics adopted by the caveator would succeed and the petitioner would be further harassed in the present proceedings.

11. This Court has considered the rival submissions in the backdrop of the aforesaid report submitted by the testamentary registrar. The report does show that after the objections in respect of the application for condonation of delay were raised by the scrutiny officer on 20.10.2020, the said objections were partly removed on 12.03.2021. It is

claimed on behalf of the caveator that all the objections were removed on the same day. The report shows that the last objection was removed on 19.01.2023. In the interregnum, a period of about two years elapsed.

12. Even if the statement made on behalf of the caveator that all the objections were removed on 12.03.2021 is to be accepted, the record does show that the caveator and the advocate representing the caveator took no steps to have the application for condonation of delay listed for consideration before this Court. The application remained pending and languished in the department. The caveator obviously did not show any enthusiasm or alacrity for having his application for condonation of delay considered and ordered by this Court.

13. It was only after the petitioner was constrained to move the aforesaid Interim Application No.86 of 2023 for dismissal of the caveat and for a direction to the department that delay ought not to be condoned in removing the office objections, that the caveator was galvanized into taking further steps in respect of his application for condonation of delay. To that extent, this Court is of the opinion that the caveator is to be blamed for delay in listing of the application for condonation of delay for consideration before this Court. The question is, whether only on the said ground, the application for condonation of delay should be dismissed or this Court should look into the reasons stated in the application for condonation of delay so that the caveat can be taken on record.

14. This Court is of the opinion that the aforesaid conduct of the caveator in keeping the application for condonation of delay pending before the department can be dealt with by issuing appropriate directions to pay costs to the petitioner. But, the application for condonation of delay can be looked into by this Court to examine as to whether sufficient ground is made out for condoning delay in filing the caveat

and the affidavit in support thereof.

15. This Court has considered the application filed on behalf of the caveator. The citation was served on 25.11.2019 and in the application, the caveator has given details as to the steps that were taken on his behalf in engaging advocates and giving instructions. It is an admitted position that the caveator is a resident of United States of America (USA) and that he is also a senior citizen. It is stated in the application that considering his age and indifferent health, the applicant took some time in sending the papers and giving appropriate instructions to his advocate for filing of the caveat and the affidavit in support thereof in this Court. It also cannot be disputed that the *Covid-19* pandemic did hit India and the world some time in March, 2020. It is stated in the application that on the instructions of the caveator, the advocate representing the caveator did appear before the department on 04.03.2020 and sought further time for taking steps in the matter. The proceedings were adjourned to 08.04.2020 by which time, the *Covid-19* pandemic had already hit the nation. Thereafter, the caveat along with the affidavit in support thereof and the application for condonation of delay were filed on 24.09.2020.

16. Considering the said statements made in the application and the fact that the caveator is a senior citizen residing in USA, this Court is inclined to condone the delay so that the caveat and the affidavit in support thereof can come on record. This would give an opportunity to the caveator to contest the proceeding on merits. It cannot be said that the petitioner would suffer any prejudice. All that would happen upon condoning the delay and taking the caveat and affidavit in support thereof on record is that the petitioner would have to contest the proceedings on merits. Therefore, this Court is inclined to allow the application filed by the caveator.

17. A perusal of the application filed by the petitioner shows that dismissal of the caveat is sought only on the basis that the delay in filing the same ought not to be condoned. Since this Court is inclined to allow the application filed by the caveator, the application filed by the petitioner will have to be dismissed. But, this Court cannot ignore the conduct of the caveator as to the manner in which the application for condonation of delay was pursued before the department. As noted hereinabove, even if the statement made by the advocate for the caveator is to be accepted that all objections pertaining to the application for condonation of delay were removed on 12.03.2021, it is evident that no steps were taken thereafter to ensure that the application was listed for consideration before this Court at the earliest. A time period of more than three years has elapsed and the application has now come up for consideration before this Court. For the said conduct of the caveator, this Court is inclined to impose costs on the caveator, to be paid to the petitioner.

18. In view of the above, Interim Application No.245 of 2023 is allowed. Consequently, delay in filing the caveat and affidavit in support thereof is condoned. The department shall take on record the caveat and the affidavit in support of the caveat. Interim Application No.86 of 2023 is dismissed.

19. The application of the caveator is allowed subject to the caveator paying costs of Rs.50,000/- to the petitioner within six weeks from today. It is made clear that if the caveator fails to pay the amount of costs to the petitioner within the stipulated period of time, the order passed today shall stand recalled and Interim Application No.245 of 2023 shall stand dismissed without reference to this Court.

20. At this stage, the learned counsel for the petitioner submits that even if the affidavit in support of the caveat is to be considered by this

Court, there is no substantial objection raised on behalf of the caveator and that therefore, the caveat ought to be dismissed on merits.

21. This Court will consider the said submission on the next date of hearing.

22. List for further consideration on 21.06.2024.

(MANISH PITALE, J.)

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