

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

INTERIM APPLICATION NO.3425 OF 2022

IN

SUIT NO.49 OF 2005

IN

PETITION NO.104 OF 2005

Padma Raghava Shetty ... Applicant / Plaintiff
Vs.
Yashodha Krishna Shetty and others ... Respondents / Defendants

Mr. Karl Tamboly a/w. Mrs. Lata Dhruv, Ms. Swati Sutar and Mr. Ronak Shah
i/b. Dhru & Co. for Applicant / Plaintiff.

CORAM : MANISH PITALE, J.

DATE : FEBRUARY 05, 2024

P.C. :

. By this application, the applicant / original petitioner and now the plaintiff is seeking discharge of the caveat on the ground that the contentions raised in the caveat were identical to the contentions raised on behalf of the caveator in a separate suit filed before the City Civil Court and in the light of the fact that the said suit has been withdrawn on 17.07.2014.

2. The learned counsel appearing for the applicant submits that the testamentary petition, from which the present suit arises, was initially filed as a probate petition, but with the demise of the executor, the beneficiary came on record and the petition was converted into the petition for grant of letters of administration with Will annexed. It was subsequently converted into the suit in the light of the caveat being taken on record.

3. It is submitted that the advocate representing the caveator was

served with the papers pertaining to the present application and that the legal representatives of the caveator, except Santosh K. Shetty, were all served by way of speed post. The affidavit of service tendered on behalf of the applicant is taken on record. It shows that in the case of Santosh Krishna Shetty, the packet sent by speed post was returned as the addressee had left without instructions. Considering the contents of the affidavit of service, as also the assertion that the advocate representing the caveators has been served with the papers pertaining to the present application, this Court is proceeding to consider the application on merits.

4. The learned counsel for the applicant relies on paragraphs 6 and 7 of the application to impress upon this Court that the contentions raised in the caveat and the suit filed by the caveator are identical. It is brought to the notice of this Court that the suit was initially filed before this Court and subsequently, it stood transferred to the City Civil Court. The caveator being the plaintiff therein sought a decree for administering the estate of the deceased, proceeding on the basis that the deceased had died intestate. In the affidavit filed in support of the caveat also, an identical stand was taken while asserting that the deceased was not in a fit state of mind to execute the Will and that therefore, the Will was sham and bogus, demonstrating that the testator had died intestate.

5. The documents filed with the application show that the legal representatives of the original caveator, who was the plaintiff in the suit pending before the City Civil Court, applied for withdrawal of the suit, indicating that they were not interested in pursuing the same. On that basis, on 17.07.2014, the City Civil Court passed an order allowing the suit to be withdrawn.

6. This Court finds substance in the contentions raised on behalf of the applicant that withdrawal of the suit clearly indicates that the

plaintiff therein, being the caveator in these proceedings, had given up the contentions for opposing the subject Will. Despite service, the legal representatives of the original caveator have chosen not to appear before this Court, as a consequence of which, the statements made in the application remain uncontroverted.

7. In view of the above, the application is allowed in terms of prayer clause (a), which reads as follows:-

“(a) That this Hon’ble Court be pleased to discharge / dismiss the Caveat dated May 19, 2005 filed by the Caveator / Defendants / Respondents as non-maintainable.”

8. As a consequence, the suit is re-converted back to Testamentary Petition No.104 of 2005.

9. Considering the fact that the petition was filed as far back as in the year 2005, the department shall take expeditious steps for grant of letters of administration with Will, in accordance with law.

(MANISH PITALE, J.)

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