

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO.384 OF 2023
IN
PETITION NO.409 OF 2021

Sanjay Nitinkumar Mehta	...	Petitioner
Vs.		
Sumitra Nitinkumar Mehta and others	...	Respondents
Nitinkumar Manekchand Mehta	...	Deceased

Ms. Sunitha Perumal for Petitioner.

Mr. Manan Jaiswal i/b. MLS Vani & Associates for Respondent No.1.

CORAM : MANISH PITALE, J.
DATE : JANUARY 10, 2024

P.C. :

. Heard learned counsel for the parties.

2. By this petition, the petitioner is seeking revocation of probate granted by this Court on 04.08.2021. The petitioner is the son of the respondent No.1 and the brother-in-law of the respondent No.2.

3. Respondent Nos.1 and 2 were the original petitioners in the testamentary petition filed for grant of probate of Will dated 19.10.2006.

4. Respondent No.1 i.e. the mother of the petitioner and respondent No.2 i.e. the brother-in-law of the petitioner have been named as executors of the Will and in that capacity, they had filed the probate petition.

5. It is the case of the petitioner that citation was not properly served on him. This Court was informed that despite intimation, the citation was unclaimed and on that basis, the department proceeded to process the probate petition and to issue the grant.

6. It is submitted that the citation was sought to be served on 30.03.2021 i.e. during the period when *Covid-19* pandemic was raging in this country. It is the specific case of the petitioner that due to the *Covid-19* pandemic, between 05.09.2020 to 20.04.2021, the petitioner along with his family had moved out of Mumbai and he was residing with his family in South Gujarat. It is specifically stated in the petition that the electricity bills during the aforesaid period between September 2020 to April 2021 would show that the residence of the petitioner at Mumbai was unoccupied and that the electricity was not being consumed.

7. Apart from this, the learned counsel appearing for the petitioner submits that vaccinations were taken by the petitioner and his family at Gujarat and the vaccination certificates indicate the aforesaid fact. Reference is also made to certain withdrawals made from Automated Teller Machines (ATMs) in Gujarat to support the aforesaid contention raised on behalf of the petitioner. Copies of the electricity bills, the vaccination certificates and the bank account statement showing withdrawal from ATMs in Gujarat have been tendered. The same are taken on record and marked 'X'. A perusal of the electricity bills indeed shows that there was hardly any consumption of electricity during the aforesaid period. Copies of the vaccination certificates indeed show that vaccinations were administered at Valsad in Gujarat and ATM withdrawals are also evident from the copy of the account statement placed on record.

8. In response, the learned counsel appearing for the respondent No.1 submits that the process of the Court was duly followed and since the petitioner did not claim the citation despite intimation, no fault can be found in the procedure followed by the department of this Court. An attempt was made to indicate that the dispositions in the Will are clearly

justified.

9. In the present petition, this Court is only concerned with the question as to whether the prayer for revocation of grant can be favourably considered.

10. This Court is of the opinion that in the light of the statements made in the petition and the copies of documents tendered before this Court, sufficient ground is made out to indicate that the petitioner and his family were not available at the time when attempt was made to serve the citation upon the petitioner at Mumbai. This Court cannot be oblivious of the impact *Covid-19* pandemic had on the population at large and the petitioner in particular, in the facts and circumstances of the present case. It appears that if the citation had been duly served, the petitioner would have appeared to contest the probate petition. An opportunity deserves to be granted to the petitioner to contest the original probate petition.

11. At this stage, the learned counsel for the respondent No.1 submitted that if efforts are made, the dispute between the parties could perhaps be settled.

12. The said exercise can be undertaken in the probate petition as this Court is inclined to allow the present petition.

13. In view of the above, the miscellaneous petition is allowed in terms of prayer clauses (a) and (b), which read as follows:-

“(a) For an order revoking the Probate dated 4th August 2021 granted by this Hon’ble Court in Petition No.409 of 2021 to the alleged Will dated 19th October 2006 of Mr.Nitinkumar Manekchand Mehta;

(b) For an order directing the Respondents to surrender the Probate issued in respect of will dated 19th October 2006 of Mr. Nitinkumar Manekchand Mehta;”

14. As a consequence, the original testamentary petition for grant of probate of Will shall stand restored. The petitioner herein would be at liberty to take such steps as available in law in the said petition.

(MANISH PITALE, J.)

Minal Parab