

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

**INTERIM APPLICATION NO.5281 OF 2022
IN
APPEAL NO.45 OF 2010
IN
TESTAMENTARY SUIT NO.66 OF 1993
IN
TESTAMENTARY PETITION NO.495 OF 1993
WITH
NOTICE OF MOTION NO.189 OF 2017
IN
APPEAL NO.45 OF 2010**

Ajaykumar Manharlal Shah ... Applicant/Org. Respondent

In the matter between

Ashokkumar Manharlal Shah ... Appellant/Org. Defendant

Vs.

Ajaykumar Manharlal Shah ... Respondent/Org. Petitioner

Mr. Ajaykumar Shah, Applicant in person present.

Mr. Aseem Naphade a/w Mr. M. K. Tanna i/by A. V. Jain
Associates for the Appellant in Appeal No.45 of 2010.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 06th FEBRUARY 2024

P.C.:

By the present Interim Application, the Applicant who is the Respondent in the captioned Appeal, seeks the following prayers, viz.

- "9. *The Applicant/org. respondent, therefore, prays;*
- a) That the present Application be admitted and allowed;*
 - b) That the Appeal No.45 of 2010 be Dismissed as Infructuous;*
 - c) Cost of the present Application be granted;"*

2. Mr. Ajaykumar Shah, the Applicant who appears in person submits that the Appeal itself is not maintainable as the same impugns an Order dated 4th November 2009 by which Letters of Administration in respect of the properties and effects of one Lalitaben Manharlal Shah have been granted to the Applicant. It is his submission that the appropriate remedy to challenge the grant of Letters of Administration would be a Petition for Revocation of such Grant and not an Appeal. Basis this, he submits that the Appeal is not maintainable and must thus be dismissed at the outset.

3. Mr. Shah then took us through the detailed written submissions filed by him and pointed out therefrom that as per Section 41 of the Indian Evidence Act, 1872, the grant of Letters of Administration by a competent Court would operate in *rem*. In support of his contention, he placed reliance upon the following judgements, viz.

(i) ***Smt. Rukmani Devi and Others Vs. Narendra Lal Gupta***¹

(ii) ***Smt. Multivahuji w/o Goswami Goverdhaneshji Girdharlalji Vs. Smt. Kahndivahuji & Ors.***²

4. Mr. Shah then placed reliance upon Article 137 of the Limitation Act, 1963 to submit that the Appellant ought to have sought revocation of the grant of the Letters of Administration was three years from the date of the grant which was 14th January 2010. He submitted that the Appellant admittedly not having done so with the prescribed time, any such challenge now presented would be grossly barred by limitation. In support

1 AIR 1984 Supreme Court 1866

2 AIR 1994 GUJARAT 42

of his contention, he placed reliance upon a judgement of the Hon'ble Supreme Court in the case of ***Ramesh Nivrutti Bhagwat Vs. Dr. Surendra Manohar Parakhe***³. Basis the above, he submitted that the present Appeal was required to be dismissed as being not maintainable.

5. *Per contra*, Mr. Naphade, Learned Counsel appearing on behalf of the Appellant invited our attention to Rule 403 of the Bombay High Court (Original Side) Rules, 1980 and pointed out therefrom that once an Affidavit in Support of a Caveat was filed, a Testamentary Petition was numbered as a Suit and the procedure in such Suit shall be according to the procedure applicable to Civil Suits on the Original Side of this Court. He submitted that in the present case since the Appellant had filed a Caveat and an Affidavit in Support thereof, there could be no manner of doubt that Rule 403 would apply. Basis this he submitted that since the procedure applicable to Suits would apply to the captioned Suit, the present Appeal would be maintainable as a first Appeal under the provisions of Section 96 read with XLI of the Code of Civil Procedure, 1908.

3 (2020) 17 SCC 284

6. He then invited our attention to Section 263 of the Indian Succession Act, 1925 and pointed out that the same applied only in cases where revocation was sought for on any one of the specific grounds enlisted therein. He submitted that Section 263 neither provided for nor did the same in any manner preclude the filing of an Appeal from an order granting Letters of Administration in a Suit as per Rule 403 of the Bombay High Court (Original Side) Rules, 1980.

7. Basis the above, he submitted that the present Appeal being a first Appeal filed under the provisions of Section 96 and Order XLI of the Code of Civil Procedure, 1908 was maintainable. He thus submitted that the present Appeal would be maintainable and there was no merit in the submission that the proper remedy would be a Petition for Revocation.

8. We have heard the Applicant in person and Learned Counsel for the Appellant. We find that the present Interim Application is thoroughly misconceived and deserves to be dismissed for the following reasons, viz.

- A. The Applicant's entire case is that an Appeal is not the appropriate remedy and thus the present Appeal ought to be dismissed at the threshold. Though this was vehemently argued by the Applicant, not a single provision of law was shown to support such a contention or how the Appeal was not maintainable. Even the judgements relied upon by the Applicant are entirely on the well settled proposition that the order of grant of letters of administration would operate in rem and nothing more. The judgements do not even remotely hold that an Appeal would not be maintainable from an order granting letters of administration. We thus fail to understand how either of the judgements cited ***Smt. Rukmani Devi*** (supra) or ***Smt. Multivahuji w/o Goswami Goverdhaneshji Girdharlalji*** (supra) would be of any assistance to the Applicant in support of the proposition so strenuously canvassed.

B. *Furthermore*, Rule 403 of the Bombay High Court (Original Side) Rules, 1980 is abundantly clear and in terms provides that upon the Affidavit in Support of Caveat being filed, the Petition shall be numbered as Suit. There is no dispute that in the present case the Testamentary Petition stood converted to the captioned Testamentary Suit. Thus, as per Rule 403 of the Bombay High Court (Original Side) Rules, 1980, the same was heard and disposed of as a Suit filed on the Original Side of this Court. It is equally clear that Section 263 of the Indian Succession Act, 1925, would be applicable only where revocation is sought for on one of the grounds explicitly set out therein. Section 263 does not in any manner preclude and/or bar the filing of an Appeal from an order granting Letters of Administration on a ground of challenge apart from those set out in Section 263.

C. Given the aforesaid reasons (A) and (B), the Applicants contention of limitation is entirely untenable since we have held that the Appeal is maintainable. The Appeal having being filed within the prescribed time, the judgement of the Hon'ble Supreme Court in the case of ***Ramesh Nivrutti Bhagwat*** (supra) would also be entirely inapplicable.

9. Hence, for the aforesaid reasons, the Interim Application is dismissed.

10. The Appeal to be taken up for hearing on 04/03/2024 at 2.30 p.m.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)