

Ajay

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

**MISCELLANEOUS PETITION NO. 57 OF 2025
WITH
INTERIM APPLICATION (L) NO. 21884 OF 2025
IN
MISCELLANEOUS PETITION NO. 57 OF 2025**

Rajendra Baliram Gholape	.. Petitioner
Pramila Pravin Naik	.. Respondent
Sudarshan Sudam Sadaphule	.. Intervenor

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- Ms. Praneeta Saboo a/w Ms. Seema Hunnurkar, Advocates for Petitioner.
 - Ms. Pranila Naik, Respondent in person
 - Mr. Sudershan Sadaphule Applicant / Intervenor in person in IA(L) No.21884 of 2025

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CORAM : MILIND N. JADHAV, J.
DATE : OCTOBER 15, 2025.

P.C.:

1. This Revocation Petition bearing MPT No. 57/2025 is filed for revocation of probate of the Last Will and Testament of deceased Tanuja Rajendra Gholape alias Kamal Rajendra Gholape. Petition is filed by Rajendra Baliram Gholape. Petition is vehemently opposed by two siblings of the deceased.

2. Brief facts relevant for consideration are as under:

2.1. Respondent Pramila Praveen Naik, advocate by profession is the sister of the deceased. Intervenor Sudershan Sudaphule, Advocate

by profession is brother of deceased and he has filed Intervention Application (L) No. 21884 of 2025. Admittedly both the deceased and Petitioner - husband were working in the Goods and Service Tax Department of the State Government at Mazgaon and they were / are 100% disabled namely deaf and mute. Deceased expired on 09.06.2020. Citation was admittedly served on Petitioner being husband of deceased in October 2022.

2.2. The Petitioner filed caveat on 16.09.2022. According to Petitioner there was delay of two days in filing of Caveat whereas according to Respondent there was delay of 6 days in filing of Caveat. Affidavit of support in Caveat was filed after delay of 3 days. It is seen that Petitioner filed Interim Application No. 31696 of 2022 for condonation of aforesaid delay on 09.11.2022. By order dated 12.10.2023 the said Interim Application was dismissed for non compliance of Rule 986 of the Bombay High Court Original Side Rules, 1980 (for short “**OS Rules**”). By further order dated 18.01.2024 Caveat was rejected due to non compliance with Rule 986 of the OS Rules.

2.3. Thereafter on 04.05.2024 Probate of the Last Will and Testament of the deceased was granted in favour of Respondent by this Court. On 06.09.2024 Petitioner - Husband of deceased was informed about grant of probate. Hence the present petition.

3. Ms. Praneeta Saboo, learned Advocate for Petitioner -

Husband would submit that deceased and Petitioner got married in the year 1977 and both of them resided together at their matrimonial home in Kalachowki, Mumbai. She would submit that Petitioner is having 100% disability i.e. hearing impediment. She would submit that in May 2020 during lockdown period deceased was residing at her brother's residence in Pune where she fell gravely ill due to serious health conditions and was admitted to the hospital by her sister and family members. Thereafter, on 09.06.2020 she succumbed to her condition at home after being discharged.

3.1. She would submit that Exhibit - 'B' to Petition appended at page No. 30 is the discharge summary of deceased which shows that her discharge was done against medical advice. She would submit that this is very crucial because demise of deceased was not even informed to Petitioner (her husband) and without Petitioner's knowledge or consent, her final rites and rituals were conducted in Pune by the Respondent and her family members. She would submit that during that period Covid lockdown was in progress. She would submit that Petitioner came to know about his wife's demise through some relatives.

3.2. Next she would submit that in October 2022 Petitioner for the first time received a citation issued by this Court in Probate Petition No.1800 of 2022 filed by Petitioner's sister who is Respondent herein.

The Respondent sought probate for a purported will of deceased wherein the deceased bequeathed her entire assets to her mother, sisters including Respondent and one brother who is Intervenor herein to the complete exclusion of Petitioner (husband) and another younger brother Mr. Praveen Sadaphule. It is vehemently argued by Advocate for Petitioner that deceased was deaf and mute and there were absolutely cordial relations with Petitioner (her husband) and therefore there was no reason for her to have excluded the Petitioner i.e. her own husband who had lived with her for more than 23 years in marriage from her Will.

3.3. Learned Advocate for Petitioner would argue that due to Petitioner's disability, he faced significant challenges in pursuing and understanding the legal remedies after being served with the citation. She would submit that Petitioner with the help of his relatives approached Advocate Ashish Dowd who referred him to Advocate Sonali Sabale who filed the Caveat and supporting affidavit. That Advocate on record for Petitioner was one Advocate Surbhi Agarwal. Petitioner learnt there was delay in 3 days in filing Caveat hence Interim Application No. 31696 of 2022 seeking condonation of delay on the above grounds. The said Interim Application was listed on 09.11.2022 and adjourned to further date. Thereafter conditional order dated 12.10.2023 was passed and the matter was dismissed for non compliance with office objections on 18.01.2024 in the presence of

Advocate for Petitioner Ms. Agarwal by observing that Caveator is not interested in pursuing with the caveat.

3.4. It is averred in the Petition that when Petitioner enquired with the Advocate he was assured about the matter but only when petitioner received letter dated 06.09.2024 from his employer he realized that his caveat was dismissed.

3.5. Learned Advocate for Petitioner would submit that Respondent, the sister of deceased has already withdrawn certain service benefits from the deceased's employer namely the GST Department of the State Government on the basis of the grant issued without his consent. He would submit that it is highly improbable that deceased would prepare a Will favouring her family members only when she resided with the Petitioner – Husband for so many years. She would vehemently submit that being deaf and mute the deceased was incapable of comprehending legal documents or making informed decisions including creating the alleged Will in the manner in which it was done. She would submit that exclusion of Petitioner her husband benefits the legal heirs and this raises significant suspicion.

3.6. She would submit that procedural default of delay of 3 days or 6 days in filing the caveat and 3 days in filing affidavit in support was beyond Petitioner's control for which it was dismissed. She would submit that in the meanwhile because of dismissal of Caveat, the

Respondent sister of the deceased who is an Advocate has gone ahead and obtained the Probate and on the basis of the same also withdrawn the service benefits of the deceased who is an Advocate from her employer which is the State Government without the knowledge or consent of Petitioner. She would therefore submit that this is a fit case for revocation of the Grant especially when the same is already misused by the Respondent to the detriment of the legal heir i.e. husband of the deceased. She would submit that deceased was also the owner of an immovable property / flat and therefore grave suspicion is raised due to the acts of the Respondents.

3.7. She would submit that Petition is filed by Petitioner who has been duly explained in sign language ensuring that he fully understands its substance and purpose and accordingly it has been verified. He would submit that in view of the aforesaid submissions the revocation should be allowed in its entirety.

4. *PER CONTRA*, Respondent - sister of deceased is appearing in person to oppose the Revocation Petition. She has filed Affidavit-in-Reply dated 22.09.2025 appended at page 77 to the Petition. She would submit that the Petition is filed without exhibiting just cause as contemplated under Section 263 of the Indian Succession Act, 1925 for explaining the delay of 6 days in filing the Caveat in 3 days for filing the affidavit in support and for not removing the office objections.

4.1. She would argue that by virtue of the Will, deceased - testatrix has disposed of her self acquired property as per her wish as she was in a disposing state of mind at the time of execution of her Last Will and Testament. He would submit that reasonable opportunity and time was granted to oppose grant of Probate but Petitioner chose to sleep and slumber over his right to be heard. In the Affidavit – in - Reply Respondent has repeatedly stated that Petitioner has not demonstrated any just cause for revocation of the Grant nor cited legal disability which prevented him from filing the caveat within the stipulated time. She would submit that Petitioner's Advocate Surbhi Agarwal was intimated over email by her reminding her to remove the office objections on 10.05.2023 despite which the office objections were not removed leading to passing of conditional order dated 12.10.2023. She would submit that shifting the blame on Advocate should not be allowed by court as there is no satisfactory reason given by Petitioner which prevented him from keeping in touch with his advocate during the entire proceedings.

4.2. Thereafter, she would further submit that there were serious differences between Petitioner and his wife leading to disputes but I refrain from considering those issues and submissions for the purpose of revocation of grant. Reason as to why Testatrix decided to exclude Petitioner from her property cannot be gone into for revocation of grant. It is seen that according to Respondent the Testatrix was

interacting and conversing with her in sign language and therefore there was absolutely no need for any medical practitioner to explain the said Will in sign language to the Testatrix. All this would be subject of trial as it raises serious doubt in the mind of the court

4.3. In support of her submission respondent has referred to the following citations: -

(1) Anil Behari Ghosh V/s. Smt. Latika Bala Dassi and Ors.¹;

(2) Atul Purshottam Borkar V/s. Kumudini Ravindra Amrute Deceased through Legal Heirs²;

(3) Anand Burman V/s. State³.

5. Intervenor is brother of deceased. He is also an Advocate by profession. He has filed Intervention Application (L) No. 21884 of 2025 stating that Petitioner husband failed to remove office objections in time and therefore his caveat was dismissed under Rule 986 of the OS Rules. He would vehemently argue that that under Section 263 of the Indian Succession Act, 1925, grant of probate may be revoked only for "*just cause.*" He would submit that non-service of citation may constitute just cause, but where citation has been duly served and objections not pursued, revocation is not warranted. He would refer to and rely upon the decision of this Court in the case of ***Sharad Shankarrao Mane v. Ashabai Shripati Mane⁴*** which emphasized that

¹ AIR 1955 SC 566

² First Appeal No.128 of 2025 decided on 02.04.2025

³ Test Cas 25/2010 decided on 27th July, 2012

⁴ 1996 SCC OnLine Bom 422

procedural lapses by a caveator cannot be grounds for revocation once the grant is made after due process. He would submit that present revocation petition fails to demonstrate any "just cause" as required under Section 263 of the Indian Succession Act, and is filed with malafide intent to delay the administration of the estate and deprive the beneficiaries of their rightful inheritance.

5.1. Next, he would submit that continued pendency of such frivolous proceedings causes undue hardship to the beneficiaries, who are deprived of their lawful entitlement under the purported Last Will and Testament of the deceased and that two beneficiaries, namely Mrs. Jayashree Pradip Holkar and Smt. Shalan Sudam Sadaphule, passed away without deriving benefit from the purported Last Will and Testament of the deceased. He would urge me to protect the rights and bequests of remaining beneficiaries by dismissing the Revocation Petition with exemplary costs. He would submit that timely justice is the cornerstone of the legal system, and the impugned proceedings undermine sanctity of testamentary dispositions and erodes public confidence in the probate process.

5.2. Next, he has drawn my attention to paragraph Nos. 1 to 9 in his intervention application in seriatim which are rebuttal submissions are on merits. In so far as issue of delay is concerned, he would argue that just cause must be established by clear and cogent evidence and

once probate is granted after due process, heavy burden is cast on the challenger to prove just cause. He would argue that citation was duly served on Petitioner and he was legally represented by advocate therefore ignorance of law and advocates negligence cannot be an excuse for procedural default since petitioner was fully aware about the petition for issuance of grant and he filed caveat and interim application. He would submit that Petitioner's Revocation Application is therefore a frivolous challenge and litigation and it must be discouraged with heavy costs.

5.3. He would submit that revocation petition be dismissed for not establishing just cause as envisaged under Section 263 of the Indian Succession Act, 1925. In support of his case he would refer to decision of this court in the case of *Sharad Shankarrao Mane v. Ashabai Shripati Mane (supra)*.

6. I have heard the learned Advocates appearing at the bar and considered the rival submissions and perused the record of the case. Submissions made by them have received due consideration of the Court.

7. It is seen that admittedly there is a delay between 2 to 6 days after service of citation. Similarly there is a delay of 3 days in filing of Affidavit in support of Caveat. That delay in my opinion is condonable. Petitioner is suffering with 100% disability which is fairly and candidly admitted by Respondent and Intervenor both. Steps taken by Petitioner

during those days namely Covid days in the aftermath of Covid lockdown to file the Caveat within 14 days after service of citation have been duly explained and that explanation is believable and therefore the delay occurred in filing the caveat and affidavit – in support of 2 to 6 days and 3 days is condoned in the interest of justice.

8. In so far as the Revocation of Grant is concerned Respondent sister of deceased and Intervenor are both Advocates by profession. They have vehemently opposed the Petition. In the pleadings filed by them and arguments made across the bar they have pleaded that the will has been correctly executed in accordance with law. If that be the case, they should not have any impediment in proving the Last Will and Testament of their deceased sister in accordance with law. It is seen that by virtue of the alleged purported Will, class one legal heir of the deceased namely her husband is completely excluded from the Will. He has filed his caveat to challenge the said disposition because of delay of 6 days and 3 days in filing the Caveat and affidavit in support and non-removal of office objections. His entire challenge is dismissed for delay. Considering petitioner's disability of 100% and more specifically the fact that Petitioner approached his advocates to do the needful petitioner cannot be penalized for his Advocates negligence. He has taken appropriate steps diligently.

9. It is seen that when the order dated 18.01.2024 was passed Petitioner's Advocate Ms. Surbhi Agrawal was present before the

Prothonotary and Senior Master which *prima facie* shows that said Advocate had knowledge of disposal of Caveat on the ground that Petitioner was not interested in pursuing the Caveat as stated therein. If that be the case then Petitioner cannot be blamed for non-removal of office objections. Petitioner's new advocate has relied on decision of Supreme Court in ***Rafiq and Anr V/s. Munshi Lal and Anr.***⁵ in support of this proposition wherein the Supreme Court has referred to our present adversary legal system where parties appear through their Advocates and once so appointed Advocates do the rest of the things. Paragraph 3 of the aforesaid decision is relevant and is reproduced herein below for immediate reference:-

"3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer

5 (1981) 2 SCC 788

because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr A.K. Sanghi."

10. The question to be answered is what is the fault of the party who having done everything in his power expected of him would suffer because of default of his Advocate. The said question is answered by the Supreme Court in the facts of the above case as can be seen from para 3 reproduced herein above.

11. In view of the above observations and findings, I am not inclined to accept the hyper-technical objection raised by respondent of not exhibiting just cause to oppose revocation of grant. The submissions made on behalf of the Respondent and Intervenor are duly rejected by this court. In view of the above the Miscellaneous Petition No. 57 of 2025 is allowed in terms of prayer clause (a).

12. Grant dated 04.05.2024 is cancelled. It is directed that

respondent and all other beneficiaries under the grant are restrained from acting in furtherance thereof. It is further directed that the original Grant dated 04.05.2024 issued in Testamentary Petition No.1800 of 2024 shall be deposited in the testamentary department by the Respondent. The Petitioner is permitted to take out appropriate proceedings as available to him in law. Delay of 6 days in filing Caveat by the Petitioner and 3 days in filing affidavit in support thereof are condoned. Dismissal order dated 18.01.2024 of the caveat is quashed and set aside in the interest of justice. The caveat and affidavit in support is directed to be restored back to the file of the Court and proceeded further by the testamentary department in accordance in law.

13. Petition is allowed in the above terms. Interim Application is accordingly disposed.

[MILIND N. JADHAV, J]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2025.10.16
16:24:23 +0530