

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 2029 OF 2024
IN
CAVEAT (L) NO. 430 OF 2024

Satishchandra Baijnath Makharia	...Deceased
Rita Sanjay Makharia	...Applicant
Pushpalatadevi Satishchandra Makharia & Anr.	...Petitioners
Vs.	
Rita Sanjay Makharia	...Caveator

Adv. Bhoomi Upadhyay i/by Jayakar Partners for the Applicant.

Adv. Tirtha Mukherjee i/by AMR Law for the Petitioners.

CORAM : ARIF S. DOCTOR, J.

DATE : 6TH FEBRUARY, 2025

P.C.:-

1. This is an Application for condonation of delay of a period of 104 days in filing of the Affidavit in support of the Caveat.

2. Heard Learned Counsel. Ms. Upadhyay for the Caveatrix submits that the citation was served on 9th December, 2023. She submits that as per the Rule 401 of the Bombay High Court (Original Side) Rules, 1980 Caveatrix filed the Caveat within the prescribed time. She invites my attention to the Interim

Application and points out that the delay in filing of the Affidavit in support of the Caveat was arose on account of the fact that the Applicant was compelled to leave her matrimonial home in the year 2022 and was required to relocate elsewhere. She points out that because of this, it took the Applicant time to gather the several documents as also procure duplicates of certain documents from various banks, office of the Charity Commissioner, office of the LIC etc. since most of these documents were misplaced and/or lost during her shifting out of the matrimonial home. She then points out that the Petitioner's did not cooperate the Applicant or provided her any documents and it was therefore this process took time.

3. Learned Counsel appearing on behalf of the Petitioners submits that the delay has not been sufficiently explained. He points out that the Petitioners vide their letter dated 23rd October, 2023 had furnished to the Caveatrix a copy of the Testamentary Petition itself. However, he had no answer forthcoming about what was stated in paragraph 7 and 8 of the Interim Application namely the steps which had been taken by the Caveatrix to obtain the necessary material, basis which the Affidavit in Support of Caveat was filed.

4. After having heard Learned Counsel, I am satisfied that sufficient cause has been shown for condonation of delay. I must also note that the Caveatrix had acted diligently in filing the Caveat within the prescribed time. Therefore, there that cannot be said any inaction on the part of the Caveatrix.

5. Hence, I am inclined to allow the Interim Application in terms of prayer clause (a) which reads thus:

“a) Be pleased to condone the delay of 104 days in filing the Affidavit in Support of Caveat.”

6. Interim Application is accordingly disposed of.

(ARIF S. DOCTOR, J.)