

Ajay

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

INTERIM APPLICATION NO. 1766 OF 2025
IN
CAVEAT (L) NO. 11590 OF 2024
IN
TESTAMENTARY PETITION NO. 1933 OF 2023

WITH
CAVEAT (L) NO. 11590 OF 2024
WITH
WILL NO. 764 OF 2023
IN
TESTAMENTARY PETITION NO. 1933 OF 2023

Ajeet Shankarrao Powar	Applicant / Orig. .. Caveator
Indiradevi Shankarrao Powar alias Indira Shankar Pawar	.. Deceased
Ranjeet Shankarrao Powar and Ors.	.. Petitioners

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- Mr. Abhishek Patil, Advocate for Applicant / Orig. Caveator.
 - Ms. Kanchan Pamnani, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 17, 2025.

P.C.:

1. Heard Mr. Patil, learned Advocate for Applicant / Original Caveator and Ms. Pamnani, learned Advocate for Petitioners.
2. Briefly stated, late Indiradevi Shankarrao Powar alias Indira Shankar Pawar (for short “**deceased**”) had four children, specifically three sons being Ajeet Shankarrao Powar, Ranjeet Shankarrao Powar

and Pradeep Shankarrao Powar; and one daughter being Madhu Powar Garg. The deceased expired leaving behind her alleged Last Will and Testament. Ranjeet Shankarrao Powar, Pradeep Shankarrao Powar and Madhu Powar Garg (for short **“Petitioners”**) filed Testamentary Petition No. 1933 of 2023 for Letters of Administration with Will annexed to the property and credits of the deceased.

2.1. Ajeet Shankarrao Powar (for short **“Applicant / Caveator”**) did not correspond with Advocate to file Petition for Letters of Administration with Will annexed and hence Officer on Special Duty with Testamentary Department passed order dated 19.06.2023 directing citation to be served. On 22.02.2024 citation was served upon Caveator, thereafter on 03.04.2024 caveat was filed. On 06.02.2025 Caveator filed Interim Application to condone delay of 27 days in filing the Caveat and Affidavit in support of Caveat. On 12.08.2025 Affidavit-in-Reply to the Interim Application was filed by Petitioners.

3. Mr. Patil, learned Advocate for Applicant / Caveator would submit that Applicant / Caveator is presently residing in California, USA. He would submit that Applicant / Caveator was surprised to receive Citation along with copy of Petition for Letters of Administration with Will annexed to the property and credits of his late mother's property which was filed by his siblings. He would submit

that according to Applicant / Caveator, the deceased did not prepare any Last Will and Testament and that she had died intestate therefore the Last Will and Testament purported to be annexed to the Petition for Letters of Administration with Will Annexed is a false and fabricated document prepared with the intention to acquire and dispose of the estate of deceased to the detriment of Caveator.

3.1. He would submit that immediately on receipt of citation, Applicant / Caveator searched for an Advocate in Mumbai to espouse his cause against the aforementioned Petition. He would submit that when Applicant / Caveator engaged an Advocate he was informed that Caveat and Affidavit in Support was to be filed within 14 days of receipt of citation. He would submit that Applicant / Caveator forthwith instructed his Advocate to draft and file the Caveat, and Affidavit in support of caveat which was later filed on 03.04.2024. He would however submit that there was a delay of 27 days in filing the Caveat, therefore the present Interim Application.

4. *PER CONTRA*, Ms. Pamnani, learned Advocate for the Petitioners, would vehemently oppose the Interim Application for condonation of delay and seek dismissal of Caveat at the threshold itself. She would submit that since Applicant / Caveator was not in Mumbai, he could not be joined as Petitioner in the aforementioned Petition. She would submit that she sent two emails dated 17.11.2023

and 05.12.2023 informing the Applicant / Caveator that a Petition for Letters of Administration with Will annexed was to be filed and that his consent was required for the same, however he did not respond to either of the emails.

4.1. She would argue that Applicant / Caveator rather informed her and shared the details of his Advocate. On 05.04.2024, when Petition came up for hearing before the First Master, Advocate of Caveator informed the First Master that Caveat had been filed. She would submit that later on 14.12.2024 Applicant / Caveator addressed an email asking for updated documents with respect to Consent Affidavit.

4.2. She would argue that Applicant / Caveator took no steps to remove office objections. However on 07.01.2025 when Caveat came up for hearing, last opportunity was granted for removal of office objections. She would submit that on 24.03.2025 when Caveat was listed for hearing before the Officer of Special Duty in Testamentary Department, Advocate for Applicant / Caveator submitted that Interim Application for Condonation for delay was filed, and matter was listed on 27.03.2025 with directions to remove office objections.

4.3. She would submit that despite multiple requests, Applicant / Caveator did not serve copy of Interim Application on her or the Petitioners. She would submit that Interim Application was listed for

hearing on multiple occasions viz, 01.04.2025, 09.04.2025, 30.04.2025, 17.06.2025, 01.07.2025, 29.07.2025 under the caption for 'Steps'.

4.4. She would submit that Applicant / Caveator was well aware that aforementioned Petition was to be filed before service of Citation. She would vehemently urge that Applicant / Caveator took no steps to remove office objections or to proceed with the Caveat between 05.04.2024 to 07.01.2025 and even after filing of present Interim Application, Applicant / Caveator took 3 months to serve copy of the same upon Petitioners. Hence she would urge the Court to dismiss the Interim Application seeking condonation of delay of 27 days and the Caveat on the above grounds of delay and laches.

5. I have heard Mr. Patil, learned Advocate for Applicant / Caveator and Ms. Pamnani, learned Advocate for Petitioners and with their able assistance perused the record of the case. Submissions made by both the learned Advocates at the bar have received due consideration of the Court.

6. It is seen that Rule 401 of the Original Side Rules state that a Caveat opposing grant of Petition for Probate or Petition for Letter of Administration shall be filed within 14 days from service of citation. It is also seen that Caveat ought to have been filed on 06.03.2025 in the present case however it was filed after a delay of 27 days. It is seen

that there is material on record in the form of emails addressed by Ms. Pamnani to Applicant / Caveator calling upon him to sign the necessary Consent Affidavit required for filing of aforementioned Petition. It is seen that as Applicant / Caveator did not respond to the said emails. It is clear that he therefore had an intention to challenge the Petition by filing Caveat.

7. Admittedly, Applicant / Caveator is a senior citizen and is presently residing in the USA. It is seen that as Applicant / Caveator resides abroad, he would require time to consult an Advocate in Mumbai in order to understand the procedure to challenge the aforementioned Petition. It is also seen that Applicant Caveator took immediate steps to search for an Advocate and give necessary instructions to him to file the Caveat. It is also seen that even after Caveat and its Affidavit-in-Support thereof was drafted and ready, same was required to be sent to Applicant / Caveator in USA to be notarized and for it thereafter to be sent back to Mumbai to his Advocate for it being filed. Hence it is clear that this entire process would undoubtedly go beyond the statutory limitation period of 14 days.

8. I have considered the objections urged by Ms. Pamnani and noted the same. Admittedly delay is of 27 days and the same in my opinion in view of the above exigencies needs to be condoned in the

interest of justice. The delay in filing Caveat along with Affidavit in support is attributable on account of Applicant / Caveator residing in the USA and his advanced age and more so, it is a delay which speaks to the expeditious character of the Applicant / Caveator. Hence I am inclined to accept the submissions of Mr. Patil and condone the delay of 27 days and allow the Interim Application for condonation of delay in filing the Caveat along with Affidavit-in-Support.

9. Interim Application is allowed. Delay of 27 days is condoned. Office is directed to take the Caveat on record and the same be placed before the concerned Officer to be decided in accordance with law.

10. Interim Application for condonation of delay is allowed and disposed.

[MILIND N. JADHAV, J.]

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