

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

INTERIM APPLICATION NO. 8098 OF 2025

IN

TESTAMENTARY SUIT NO. 8 OF 2010

IN

TESTAMENTARY PETITION NO. 41 OF 2006

Nirmal Hardayal Vazirani

... Applicant

*In the matter between*

Gomti Hardayal Vazirani alias Gomti H. Vazirani

... Deceased

Nirmal Hardayal Vazirani

... Petitioner

V/s.

Ram Hardayal Vazirani

... Caveator

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Ms. Kanchan Pamnani, for the Applicant/Petitioner.

Mr. Chinmay Babhulkar, i/b Mr. Akash Menon, for the Defendant no. 1.

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CORAM : FARHAN P. DUBASH, J.

DATE : 25<sup>th</sup> MARCH 2026

P. C.:

1. The present Interim Application has been preferred by the Applicant who is the Original Petitioner in Testamentary Petition no. 41 of 2006 which has since been converted to Testamentary Suit no. 8 of 2010.

2. By the present Interim Application, the Petitioner seeks discharge of the Caveat filed by the Caveator/Defendant and a further order

that the Registry proceed with and expedite the issuance of grant of probate. The Interim Application proceeds on the basis that the Caveator/Defendant viz. Mr. Ram Hardayal Vazirani, who is the brother of the Petitioner and son of the deceased has passed away on 17<sup>th</sup> November 2024. A copy of his death certificate is also annexed. The Interim Application further states that since the Caveator has died and no person has sought impleadment in his stead, the Caveat dated 22<sup>nd</sup> December 2009 filed by the Caveator/Defendant be discharged.

3. Ms. Kanchan Pamnani, learned Counsel who appears for the Applicant further invites my attention to a copy of the Affidavit of the Caveator/Defendant in support of the Caveat. A perusal of this Affidavit reveals that the Caveator has categorically accepted and admitted that the deceased had died leaving behind a last Will and Testament dated 17<sup>th</sup> October 1996, which has also been registered with the Sub Registrar of Assurances bearing serial no. BDR/II/2429/7/7/1996. In fact, it is noteworthy to state that the present Testamentary Petition seeks probate of the very same last Will and Testament dated 17<sup>th</sup> October 1996. Moreover, the said Affidavit further admits that the Petitioner had already, after about 3 months from the date of demise of the deceased, already administered the movable estate of the deceased as per the bequests contained in the said last Will and Testament, save and except the immovable properties referred to

therein. In this scenario, the said Affidavit does not *prima facie*, reveal any challenge to the said last Will and Testament of the deceased of which probate is sought by the Petitioner.

4. Mr. Chinmay Babhulkar, learned Counsel who appears on behalf of Defendant no. 1 fairly admits that Defendant has passed on 17<sup>th</sup> November 2024. He further admits that since then, his heirs and legal representatives have not filed any proceedings in the present Testamentary Suit. Despite this, he orally submits that some of the heirs and legal representatives of the deceased Defendant are desirous of filing their reply and opposing the reliefs sought in the present Interim Application and accordingly, seeks an adjournment of today's hearing.

5. After hearing the parties and going through the record, it is an admitted position that the Caveator/Defendant has passed away on 17<sup>th</sup> November 2024. Since then, no person has come forth and sought impleadment in the present Testamentary Suit. No further Caveat has been filed despite the passage of more than one and a half years since the demise of the Caveator/Defendant. Considering this, I am not inclined to accept the request made by Mr. Babhulkar, who purportedly appears on behalf of some of the heirs and legal representatives of the deceased Caveator/Defendant to adjourn the matter any longer. In any event, considering the contents and averments made in the Affidavit in support of the Caveat filed by the

Caveator/Defendant, I am of the view that no purpose would be served if further time is granted to such heirs and legal representatives inasmuch as a bare perusal reveals that the Caveator/Defendant had himself accepted the said last Will and Testament of the deceased of which the probate is sought by the Petitioner in the present proceedings. The Testamentary Petition/Testamentary Suit has been filed and is pending on the record of this Court since the past 20 years.

6. In the circumstances, the present Interim Application is allowed and the following order is passed :

**::ORDER::**

(i) The Caveat dated 22<sup>nd</sup> December 2009 and the affidavit in support thereof, filed by the Caveator/Defendant - Mr. Ram Hardayal Vazirani is hereby discharged.

(ii) Since there is no other Caveat filed in the matter, there is now, no challenge to the last Will and Testament of the deceased dated 17<sup>th</sup> October 1996 of which probate has been sought. Accordingly, the Testamentary Suit stands disposed of and the Testamentary Petition now stands revived.

(iii) The Office/Registry is directed to proceed with the issuance of grant of probate that is sought in the Testamentary Petition, upon compliance with the requirements prescribed in

the Bombay High Court (Original Side) Rules, 1980.

(iv) The present Interim application is disposed in terms  
of the above order with no order as to costs.

( FARHAN P. DUBASH, J. )

*Amol*