



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

INTERIM APPLICATION NO. 2121 OF 2019

IN

TESTAMENTARY SUIT NO. 82 OF 2012

Sandeep Nathmal Agarwal

...Applicant

IN THE MATTER BETWEEN :

Aditya Sarojkumar Agarwal

...Plaintiff

Versus

Sandeep Nathmal Agarwal

...Defendant

WITH

TESTAMENTARY PETITION NO. 603 OF 2014

Sajjankumar Nathmal Agarwal

...Petitioner

Ramkuribai Shivdanmal Agarwal

...Deceased

- Ms. Pooja Thakkar, for Applicant.
- Ms. Swati Sawant, for Petitioner in TP/603/2014.

CORAM : MANISH PITALE, J.

DATE : 19th OCTOBER, 2023.

P. C. :

1. Heard, learned Counsel for the parties.
2. By this application, the Applicant (Original Caveator and Defendant) is seeking recall/setting aside of order dated 03rd September, 2019, passed by this Court.
3. A perusal of the said order shows that this Court took Consent Terms on record and proceeded to effectively grant Probate of a Will dated 26th March, 1972, said to have been executed by the



deceased. It is relevant to note that Testamentary Petition No. 482 of 2010 was originally filed by Sarojkumar Nathmal Agarwal, wherein the Applicant before this Court i.e. his brother Sandeep Nathmal Agarwal filed a Caveat. The said petition was converted into Suit No. 82 of 2012 and it was at the stage of recording of evidence after issues were duly framed.

4. The other brother i.e. Sajjankumar Nathmal Agarwal filed Testamentary Petition No. 603 of 2014, before this Court, also seeking Probate of the said Will. It appears that by a specific direction, both the proceedings were clubbed together.

5. The said Sarojkumar Nathmal Agarwal expired and his legal heirs i.e. Aditya Sarojkumar Agarwal and others were brought on record. At this stage, Consent Terms were executed and placed before this Court in these proceedings concerning Testamentary Petition No. 603 of 2014, as also Suit No. 82 of 2012. It is significant to note that the signatories to the said Consent Terms were only Sajjankumar Nathmal Agarwal and his children on the one hand and the heirs of the deceased Sarojkumar Nathmal Agarwal on the other. These Consent Terms were placed before this Court in the said proceedings and it was claimed that the proceedings could be disposed of as per the Consent Terms.



6. On 03rd September, 2019, this Court took on record the said Consent Terms. On that basis, it was recorded that the Caveat stood discharged and dismissed. It was directed that the suit being disposed of with the discharge and dismissal of caveat, the petition could proceed for grant. It was further recorded that in view of the Consent Terms, Suit No. 82 of 2012 also shall stand dismissed.

7. The learned Counsel appearing for the Applicant submits that this Court could not have passed the said order on the basis of Consent Terms placed before this Court, simply for the reason that the Applicant being the contesting Defendant in Suit No. 82 of 2012 had never consented to any such order being passed. It was further submitted that since the aforesaid suit was at the stage of recording of evidence, upon specific issues being framed, there was no question of disposal or dismissal of the said suit on the basis of some settlement between Sajjankumar Nathmal Agarwal and the legal heirs of Sarojkumar Nathmal Agarwal.

8. It was brought to the notice of this Court that upon this application being filed and specific contention being raised that the Applicant before this Court was not heard when the said order dated 03rd September, 2019, was passed, by an order dated 20th December, 2019, this Court was pleased to grant stay in terms of prayer clause (b) of the present application.



9. In this application, the Respondent has filed reply affidavit and rejoinder affidavit is also placed on record. Rejoinder affidavit is taken on record. Copies of the pleadings were served on the learned Counsel representing Sajjankumar Nathmal Agarwal also.

10. It is relevant to note that there is no representation on behalf of the Respondent in the present application. It is brought to the notice of this Court that when the advocate representing the Applicant reached out to the advocate representing the Respondent i.e. Aditya Sarojkumar Agarwal, on 10th March, 2023, a response was received from the advocate representing the Respondent that the present application was redundant as the original suit itself had abated due to the death of Sarojkumar Nathmal Agarwal. In other words, it appears that the Respondent has refused to appear before this Court, claiming that the original suit itself had abated. The said communication dated 10th March, 2023, received by the advocate for the Applicant by e-mail, is taken on record and marked "X" for identification.

11. As regards Sajjankumar Nathmal Agarwal i.e. the Petitioner in Testamentary Petition No. 603 of 2014, it is specifically submitted by the learned Counsel appearing for him that in the said petition, despite service of citation on the Applicant, he had refused to



appear before this Court. This is vehemently denied on behalf of the Applicant.

12. It is further submitted that in the light of the Consent terms, the caveat filed by legal heirs of Sarojkumar Nathmal Agarwal in Testamentary Petition No. 603 of 2014, stood correctly discharged and dismissed, as per the order dated 03rd September, 2019 and therefore, there is no question of recall of the said order, insofar as the Testamentary Petition filed by Sajjankumar Nathmal Agarwal is concerned.

13. This Court has taken into consideration the material on record in the light of the rival contentions. It is undisputed that Sandeep Nathmal Agarwal i.e. Applicant before this Court in the present application was never party to any Consent Terms. It is also an admitted position that in view of the caveat and affidavit in support thereof, filed by Sandeep Nathmal Agarwal in Testamentary Petition No. 482 of 2010, it was converted into Suit No. 82 of 2012. Issues were framed and the aforesaid suit was at the stage of recording of evidence.

14. As regards Testamentary Petition No. 603 of 2014, the Petitioner therein i.e. Sajjankumar Nathmal Agarwal, through his Counsel claims before this Court that the Applicant herein i.e.



Sandeep Nathmal Agarwal was served with citation and yet he failed to file any caveat to oppose the said petition. This is vehemently denied on behalf of the Applicant. This is a disputed question. In any case, it is brought to the notice of this Court that legal heirs of Sarojkumar Nathmal Agarwal i.e. the original Petitioner in Testamentary Petition No. 482 of 2010 and the Plaintiff in Suit No. 82 of 2012, had filed caveat in Testamentary Petition No. 603 of 2014 i.e. the petition filed by Sajjankumar Nathmal Agarwal.

15. The Consent Terms are admittedly signed only by Sajjankumar Nathmal Agarwal and his children on the one hand and only the heirs of Sarojkumar Nathmal Agarwal on the other hand. There is nothing to show that Sandeep Nathmal Agarwal i.e. the Applicant before this Court i.e. the third brother, had ever consented to or signed the aforesaid Consent Terms.

16. In such a situation, it cannot be accepted that the suit which was being contested by the Applicant i.e. Suit No. 82 of 2012, could have been disposed of on the basis of the aforesaid Consent Terms. Even if the Applicant i.e. the Caveator/ Defendant in Suit No. 82 of 2012, was not present before this Court on 03rd September, 2019, this Court could not have disposed of the said Suit, only on the basis of the Consent Terms placed on record. This is particularly in the backdrop of the fact that the Suit No. 82 of 2012, was at the stage



of recording of evidence and Sandeep Nathmal Agarwal i.e. the Applicant before this Court was keenly contesting the grant of Probate of the said Will.

17. The order dated 03rd September, 2019, also records that in the light of the consent terms being taken on record, caveat was being discharged and dismissed and the suit was being disposed of. This was obviously in the context of Petition No. 603 of 2014, wherein legal heirs of the Sarojkumar Nathmal Agarawal had filed caveat and they had agreed to sign the Consent Terms.

18. As noted hereinabove, it is seriously disputed as to whether Sandeep Nathmal Agarwal i.e. Applicant before this Court was served with the citation in Testamentary Petition No. 603 of 2014.

19. In view of the aforesaid facts that have come to light, this Court is of the opinion that both the proceedings could not have been disposed of on 03rd September, 2019, by this Court, only on the basis of the aforesaid Consent Terms being taken on record.

20. The learned Counsel for the Original Petitioner in Testamentary Petition No. 603 of 2014 i.e. Sajjankumar Nathmal Agarwal has submitted before this Court today that there is sufficient material available before this Court, including statements in the reply



filed in the present application by the Respondent, to show that the Applicant herein was all along aware about the pendency of the proceedings and the fact that the aforesaid two proceedings had been clubbed before this Court. Even if that be so, this Court is unable to accept the contention that the aforesaid Consent Terms could have been the basis for disposal of the proceedings on 03rd September, 2019.

21. The e-mail dated 10th March, 2023, received on behalf of the Respondent, indicates that the Respondent has refused to participate in the present proceedings, on the specious plea that the original suit itself abated with the death of the Sarojkumar Nathmal Agarwal. The said contention is raised in the face of the admitted position that the Respondent herein i.e. Aditya Sarojkumar Agarwal and others were brought on record in place of Sarojkumar Nathmal Agarwal with Chamber Summons being allowed. Thus, there is no substance in the contention raised on behalf of the Respondent in the said e-mail communication.

22. In view of the above, this Court is convinced that the present application deserves to be allowed. Accordingly, the application is allowed in terms of prayer clause (a) and consequently the order dated 03rd September, 2019, is recalled.



23. As a consequence of the order being recalled, both the proceedings stand restored i.e. Suit No. 82 of 2012 and Testamentary Petition No. 603 of 2014.

24. The Department to verify as to whether the papers pertaining to both the proceedings are available. If need be the department shall take assistance of the advocates representing the parties for completion of record.

25. The proceedings in both i.e. Testamentary Petition No. 603 of 2014 and Suit No. 82 of 2012, are expedited.

26. The parties are directed to take necessary steps for expeditious consideration and disposal of both the proceedings.

27. List under the caption for “Direction” on **28th November, 2023.**

(MANISH PITALE, J.)