

(2013) 08 BOM CK 0176

In the Bombay High Court

Case No : Chamber Summons No. 25 of 2013 in Petition No. 133 of 2012

Mahesh Atalrai Keswani

APPELLANT

Vs

Suresh Atalrai Keswani

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Citation : (2014) 3 ALLMR 97 : (2013) 5 MhLj 825

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Sanjay Jain instructed by V. Thakers, for the Appellant; Deepan Dixit instructed by Kartikeya and Associates, for the Respondent

Judgement

R.D. Dhanuka, J.—By this chamber summons filed by the petitioner, petitioner has prayed for vacating the Caveat filed by the respondents. Citation was served on Mrs. Manu Shukla on 26th June, 2012 and on Mr. Suresh Atalrai Keshwani on 2nd July, 2012, respondent No. 2 and respondent No. 1 respectively. Petitioner was called upon to furnish copy of the probate petition by Mrs. Manu Shukla. Petitioner furnished copy of the probate petition. The petitioner through his Advocate's letter dated 19th July, 2012, 23rd August, 2012 and 31st August, 2012, called upon the Caveator to provide copy of affidavit in support of the Caveat. There was no response to any of those letters. Petitioner thereafter applied for certified copies of the Caveat and affidavit in support thereof. The petitioner at that stage came to know that Caveator has not filed affidavit in support of Caveat till date in the office of this Court. Though this chamber summons was taken out by the petitioner on 8th December 2012, no affidavit in reply has been filed by the Caveator. Mr. Jain, learned counsel appearing for the applicant invited my attention Rules 401 and 402 of Bombay High Court (Original Side) Rules which read thus:

R. 401: Caveat -- Any person intending to oppose the grant of probate or letter of administration shall file a Caveat in Form No. 116 within fourteen days from the service of the citation upon him or within such shorter time as the Judge in

Chamber may direct. Notice of the filing of the caveat shall be given by the Prothonotary and Senior Master to the petitioner or his Advocate on record. The Judge in Chambers may extend the time to file a caveat, provided the grant has not in the meantime been issued.

R. 402: Affidavit in support of caveat -- An affidavit in support of a caveat shall be filed within eight days from the date of the filing of the caveat, notwithstanding the Court vacations. Such affidavit shall state the right and interest of the caveator, and the grounds of the objections to the applications. A copy of the said affidavit shall be served by the caveator on the petitioner or his Advocate on record. If such affidavit be not filed within the prescribed time, the caveat shall not prevent the grant of probate or letter of administration. No such affidavit shall be filed after the expiry of the said eight days without an order of this Judge in Chambers.

2. On perusal of Rule 402, it is clear that an affidavit in support of caveat shall be filed within eight days from the date of filing caveat. Copy of such affidavit shall be served by the caveator on the petitioner or his Advocate on record. If such affidavit is not filed within the prescribed time, caveat shall not prevent granting of probate or letter of administration. Though petitioner vide letters dated 19th July, 2012, 23rd August, 2012 and 31st August, 2012 called upon the caveator to provide copy of affidavit in support of caveat, no affidavit in support is filed. No application for condonation of delay or for permission to file affidavit in support is filed by the caveators. Though chamber summons was served in the month of December, 2012 upon the caveators, no affidavit in reply has been filed. Compliance of Rule 402 is mandatory.

3. Since there was no application for condonation of delay in filing affidavit in support of caveat, in my view, Rule 402 of the Bombay High Court (O.S.) Rules being mandatory, caveat without any affidavit in support cannot remain on record and has to be vacated. Chamber summons is accordingly made absolute in terms of prayer clause (a). Office is directed to proceed with issuance of grant of letters of administration as uncontested matter. No order as to costs.