

(2024) 06 BOM CK 0030

In the Bombay High Court

Case No : Miscellaneous Petition (Lodging) No. 6300 Of 2024 In Testamentary
Petition No. 109 Of 2021

Sarwan Kumar Jhabarmal Choudhary

APPELLANT

Vs

Sachin Shyamsundar Begrajka

RESPONDENT

Date of Decision : 10-06-2024

Acts Referred:

Succession Act, 1865, — Section 63, 234
Indian Succession Act, 1925 — Section 263, 263(a), 263(b), 263(c), 263(d), 263(e)
Probate and Administration Act, 1881 — Section 50
Bombay High Court (Original Side), Rules, 1980 — Rule 28C

Citation : (2024) 06 BOM CK 0030

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : Yashvi Panchal, Sonal, Rohit Gupta, Kinnar Shah, V. Bhatt, Divya Shah

Final Decision : Disposed Of

Judgement

Manish Pitale, J

1. In the light of the submissions made by the learned counsel for the rival parties, as also certain judgments of this Court passed by learned Single Judges and in view of the importance of the questions involved, this Court is inclined to invoke Rule 28(C) of the Bombay High Court (Original Side), Rules, 1980, to formulate questions for decision by a Larger Bench and in that backdrop to place the papers of this case before the Hon'ble the Chief Justice.

2. Before adverting to the rival contentions and the questions arising in the present petition, a brief reference to the chronology of events would be appropriate.

3. Testamentary Petition No. 109 of 2021 was filed by the respondent for grant of Probate of a Will allegedly executed on 03rd March, 2020, by the deceased Rajesh Chowdhary. The aforesaid Rajesh Chowdhary died in Ecuador on 25th

July, 2020, having committed suicide. This is evident from the copy of the death certificate placed on record with the testamentary petition, wherein the cause of death is recorded as suffocation by means of hanging. On 09th December, 2020, the respondent filed the aforesaid testamentary petition for grant of probate. On 20th May, 2021, the petitioner filed caveat and his affidavit in support of the caveat. The caveat was allotted lodging number 11828 of 2021. By an order dated 19th December, 2022, delay in filing the caveat and affidavit in support was condoned. On 03rd August, 2023, the Prothonotary and Senior Master of this Court granted the petitioner / caveator last chance to remove office objections, within four weeks in respect of the caveat, so that it could be numbered, failing which the caveat was to stand rejected under Rule 986 of the aforesaid Rules.

4. The advocate for the petitioner / caveator failed to remove the office objections, as a consequence of which, by operation of the said order, the caveat stood dismissed. On 10th November, 2023, the Additional Prothonotary and Senior Master of this Court noted that caveats of some of the caveators, including that of the petitioner, stood dismissed due to non-removal of office objections and the only remaining caveat was withdrawn. On this basis, the petition was granted and the office was directed to issue probate.

5. On 01st January, 2023, the petitioner filed Interim Application (Lodging) No. 34288 of 2023, for restoration of his caveat, but in the meanwhile the office issued the grant. In this backdrop, the petitioner filed the present miscellaneous petition for revocation of the grant and thereupon, on 14th February, 2024, the petitioner withdrew the aforesaid application for restoration of his caveat.

6. Ms. Yashhvi Panchal, learned counsel appearing for the petitioner submitted that in the present case, the petitioner (original caveator) was invoking Section 263(a) of the Indian Succession Act, 1925 (hereinafter referred to as the "Succession Act.") for revocation of the probate granted in favour of the respondent. It was submitted that the deceased had died in suspicious circumstances, having committed suicide in Ecuador. It was submitted that the affidavits of the two attesting witnesses themselves stated that while the subject Will was signed and executed by the deceased – testator in Ecuador, the attesting witnesses had signed on the same in India when the subject Will, bearing only the signature of the deceased testator, was sent from Ecuador to India. It was submitted that therefore, the grant could be said to be defective in substance.

7. It was further submitted that the mandatory requirement of Section 63 of the Succession Act, was not satisfied in as much as the attesting witnesses had not signed the Will in the presence of the testator. Therefore, the grant ought to be revoked. It was further submitted that in the present case, although the delay in filing the caveat and affidavit in support thereof was condoned, due to default and mistake on the part of the advocate representing the petitioner (original caveator), the caveat stood dismissed due to non-removal of office objections.

The petitioner ought not to suffer due to the negligence, oversight and mistake of the advocate and that therefore, this Court may consider revoking the grant.

8. In support of the aforesaid submissions, the learned counsel for the petitioner relied upon judgment of the Division Bench of the Madras High Court in the case of Gita alias Gita Ravi v. Mary Jenet James alias M.J. James and others 1995 2 L.W. 831. In the said judgment, after referring to the judgments of various High Courts, including this Court, the Division Bench of the Madras High Court categorically held that explanations (a) to (e) to Section 263 of the Succession Act were not exhaustive of the circumstances for revoking or annulling a grant for "just cause", indicating that the explanations were only illustrative. Reliance was also placed on judgment of the Supreme Court in the case of S. Sundaram Pillai and others vs. V. R. Pattabiraman and others (1985) 1 SCC 591, to contend that the explanation appended to a provision only explains the meaning and intendment of the statutory provision.

9. On the other hand, Ms. Sonal, learned counsel appearing for the respondent submitted that in the facts of the present case, the grounds raised in the revocation petition are not covered in any of the explanations (a) to (e) to Section 263 of the Succession Act and that therefore, this Court cannot exercise jurisdiction to revoke the grant already issued. It was submitted that explanations (a) to (e) given in Section 263 of the Succession Act are exhaustive and not illustrative in nature, thereby asserting that "just cause" for revoking or annulling the grant is necessarily required to be covered under explanations (a) to (e) to Section 263 of the Succession Act. It was submitted that in the present case, the ground of negligence, oversight or mistake of advocate representing the petitioner is not covered under explanations (a) to (e) to Section 263 of the Succession Act. It was submitted that the grant was issued on the basis of the affidavits of the two attesting witnesses already placed on record with the testamentary petition for grant of probate and therefore, explanation (a) to Section 263 of the said Act cannot be invoked by the petitioner.

10. It was further submitted that the caveator and / or the advocate representing the caveator were responsible for the dismissal of the caveat on the ground of non-removal of office objections and since the grant was already issued, there was no question of now entertaining any contentions or arguments on behalf of the petitioner in respect of the subject Will.

11. The learned counsel appearing for the respondent placed specific reliance on judgment of Division Bench of this Court in the case of Bal Gangadhar Tilak Vs. Sakwarbai & Ors. ILR 1902 26 Bom 792, judgments of learned Single Judges of this Court in the cases of George Anthony Harris vs. Millicent Spencer AIR 1933 Bom 370, and Sharad Shankarrao Mane and etc vs. Ashabai Shripati Mane AIR 1997 Bom 275. It was submitted that the aforesaid judgments of this Court had taken a view that explanations (a) to (e) to Section 263 of the Succession Act were exhaustive and not illustrative. On this basis, it was held that this Court is bound by the aforesaid position of law, further contending that in the present

case, the revocation petition itself ought to be held as not maintainable.

12. Reliance was also placed on judgment of the Supreme Court in the case of Anil Behari Ghosh vs. Smt. Latika Bala Dassi and others AIR 1955 SC 566, judgments of the Calcutta High Court in the cases of Pramode Kumar Roy vs. Sephalika Dutta AIR 1957 Calcutta 634 and Kali Krishna Chatterjee and Ors. vs. Annoda Prosad Chatterjee (1896) ILR 24 Cal 95.

13. In the present case, the material on record shows that although the petitioner had filed a caveat to oppose the grant of probate and the caveat was also allotted lodging number, due to failure in removing office objections, the caveat was dismissed and this paved the way for issuance of grant in favour of the respondent. The petitioner is admittedly the brother of the deceased, while the respondent is the executor under the subject Will. In the light of the caveat of the petitioner and three other caveators being rejected for non-removal of office objections and the only remaining caveat being withdrawn, probate was granted in favour of the respondent.

14. The petitioner has invoked explanation (a) to Section 263 of the Succession Act, to contend that just cause exists for revoking the grant of probate, as the proceedings to obtain such a grant were defective in substance. In this regard Section 63 of the Succession Act is invoked as it is claimed that the attestation of the Will by the attesting witnesses was not proper. A perusal of the illustrations (I) to (viii) to Section 263 of the Succession Act would show that the allegations in the present case, while seeking revocation of grant or the fact situation brought to the notice of this Court, are not covered under the illustrations. Strictly speaking the respondent appears to be justified in contending that the grounds for revocation raised in the present petition are not covered under explanations (a) to (e) to Section 263 of the Succession Act. Therefore, a fundamental question arises as to whether the said explanations (a) to (e) to Section 263 of the Succession Act are exhaustive or illustrative. If the explanations are held to be exhaustive, then the very power and jurisdiction of this Court to entertain the present revocation petition would come under a cloud of doubt.

15. In this backdrop, it would be necessary to refer to the judgments of this Court, upon which reliance is placed on behalf of the respondent. In the case of Bal Gangadhar Tilak Vs. Sakwarbai & Ors. (supra), a Division Bench of this Court held that explanations appended to Section 50 of the Probate and Administration Act, 1881, pertaining to revocation or annulment of grants, were exhaustive in nature. Reliance was placed on the aforementioned judgment of the year 1896 passed by the Calcutta High Court Kali Krishna Chatterjee and Ors. vs. Annoda Prosad Chatterjee (supra). The said judgment of the Division Bench of this Court would be binding, but for the fact that the position of law laid down in the said judgment pertained to Section 50 of the Probate and Administration Act, 1881. In this regard, it would be relevant to quote Section 50 of the said Act, which reads as follows:

"50. Revocation or annulment for, just cause. - The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just Cause". - Explanation - "Just cause" is -

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances."

16. A perusal of the same would show that the explanation opens with the words "Just cause is". In fact, the legislation which was the precursor of the present Act i.e. the Succession Act, 1865, contained Section 234, pertaining to revocation or annulment of grants for just cause. The said provision was identical to Section 50 of the Probate and Administration Act, 1881, quoted hereinabove. In Section 234 of the Succession Act, 1865, also the explanation opened with the words "Just cause is."

17. It is significant to note that the language used in the present Succession Act in Section 263 thereof is materially different and it reads as follows:

"263. Revocation or annulment for just cause.—The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause shall be deemed to exist where— (a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

- (iii) The will of which probate was obtained was forged or revoked.
- (iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
- (v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (vi) Since probate was granted, a later will has been discovered.
- (vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.
- (viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind."

18. It is important to note that the explanation to Section 263 of the Succession Act, quoted hereinabove, opens with the words "Just cause shall be deemed to exist where". This is a significant departure from the words used in the Succession Act, 1865 and the Probate and Administration Act, 1881. While in the aforesaid two legislations "just cause" was specifically defined by the four explanations appended to the relevant provisions, the explanation to Section 263 of the present Succession Act simply states that just cause shall be deemed to exist where explanations (a) to (e) to Section 263 of the Act are found to apply. Thus, wherever explanations (a) to (e) to Section 263 of the Succession Act apply, there is a deeming fiction about existence of just cause for revocation or annulment of a grant. This is a clear distinguishing feature and for the aforesaid reason, this Court finds that the Division Bench judgment of this Court rendered in the year 1902 in the case of Bal Gangadhar Tilak Vs. Sakwarbai & Ors. (supra), in the context of the Probate and Administration Act, 1881, cannot be binding.

19. In the judgment of the learned Single Judge in the case of George Anthony Harris vs. Millicent Spencer (supra), being a judgment rendered in the year 1932, after enactment of the present Succession Act, it has been simply held that the explanation to Section 263 of the Succession Act is exhaustive and not merely illustrative and that the application of the petitioner must fall under one or more of the grounds under explanations (a) to (e). There is no discussion, much less any reference to the meaning of the words "Just cause shall be deemed to exist where," used in the present Succession Act as distinguished from the words "Just cause is", used in the Succession Act, 1865 and Probate and Administration Act, 1881.

20. Similarly, in the case of Sharad Shankarrao Mane and etc vs. Ashabai Shripati Mane (supra), the learned Single Judge of this Court has stated as follows:

"14. Section 263 of the Indian Succession Act, 1925 lays down the provision as to when the grant of probate or Letters of Administration may be revoked or

annulled for just case. There are five explanations given in the said Section 263. These explanations are not by way of illustration. They are exhaustive. Mr. Patwardhan has taken recourse to clause (b) of Section 263 of the Indian Succession Act and has argued that the grant was obtained by Ashabai fraudulently by making a false statement and by concealing from the Court that she was not legally married to the said Shripati.

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17. There is another social angle to this entire episode. If declaration and conclusive findings are given by a Testimony Court about the marital status of a woman accepting and believing the xerox copies of some I documents tendered across, the bar and if the grant already made in favour of that woman is revoked on the basis of such documents which are not formally proved as per the provisions of law then it will be too risky a situation. If a person dies without having an issue, his widow will be harassed by the relatives of the deceased husband who might approach the Testamentary Court with these types of applications for revocation of the grant already made in favour of the widow and the poor helpless widow would be required to prove that she was legally married to her deceased husband. This will open flood-gates of litigations where the widow would be compelled to prove in such cases about her marital status and to face the greedy relatives of her deceased husband. The presumption that a man and woman are regarded husband and wife if there is a continuous long cohabitation between them is therefore a reasonable one. To decide the marital status of parties is not a job of a Testamentary Court. Moreover, for revocation of grant already made a strict proof of presence of any one of the stated circumstances in the explanation under Section 263 of the Indian Succession Act is required, since revocation sets aside an earlier valid judicial order. To revoke a grant already made by a competent Court, strict proof should be insisted upon. It cannot, and should not be dispensed with. In the present case at hands, however, the petitioners are not only seeking to dispense with the formal proof of documents but are insisting that this Court should take cognizance of them, act upon them, and give a conclusive finding touching a status of a person which certainly is not permissible. Under the circumstances, the prayers of the 1 petitioners cannot be granted. Hence, the following order is passed :

Misc. petition No. 14 of 1994 and Misc. Petition No. 4 of 1955 are both dismissed. No order as to costs."

21. This Court is of the opinion that in the above quoted portions, the learned Single Judge of this Court has simply stated that explanations (a) to (e) to Section 263 of the Succession Act are exhaustive and that the petitioner seeking revocation of grant is to be put to strict proof of presence of any one of the stated circumstances in the explanation to Section 263 of the Succession Act.

22. Similar opinions have been rendered by the Calcutta High Court in the case of Pramode Kumar Roy vs. Sephalika Dutta (supra) and Kali Krishna Chatterjee

and Ors. vs. Annoda Prosad Chatterjee (supra). The judgement of the Supreme Court in the case of Anil Behari Ghosh vs. Smt. Latika Bala Dassi and others (supra) does not discuss the said aspect of the matter.

23. The Division Bench of Madras High Court in the case of Gita alias Gita Ravi v. Mary Jenet James alias M.J. James and others (supra) has discussed the views of various High Courts, including the Calcutta High Court and this Court on the aforesaid aspect of the matter. Reference is also made to judgments of the Madras High Court itself. After discussing the position of law, in the context of Section 234 of the Succession Act, 1865, Section 50 of the Probate and Administration Act, 1881 and Section 263 of the present Succession Act, 1925, it was held as follows :

"33. We have referred to almost all the rulings on S. 50 of the Probate and Administration Act V of 1881 and S. 263 of the Indian Succession Act, 1925 in view of the fact that in none of the cases there was a detailed discussion on the question whether the Explanation in S. 263 is exhaustive or illustrative. It was only in Annoda Prosad Chatterjee's case (I.L.R. 24 Cal. 95) there was a reasoning for holding that the Explanation in S. 50 of Act V of 1881 was exhaustive. All the subsequent decisions in which the Explanation was held to be exhaustive, simply chose to follow that judgment or other judgments which had followed the same. In Shanmugham Chetti's case, (A.I.R. 1978 Mad.304 = 91 LW 237), though there was an observation that the Explanation was illustrative and not exhaustive, there was not much of discussion. It was only in S. Govindaraj's case, (1991-2-L.W. 380), the language of S.263 was considered at some length. While agreeing with the reasoning found in that judgment, we wish to add that there cannot be any doubt as to the interpretation of the Section in that the Explanation is only illustrative and not exhaustive. We have already referred to the fact that in S.234 of Act of 1865 and S.50 of Act V of 1881, the explanation read in such a way that the words "just cause" were defined in the five clauses which followed the same Explanations in S.234 of Act X of 1865 and Section 50 of Act V of 1881 were identical in terms. They read as follows:

"Just cause is Ist, that the proceedings to obtain a grant were defective in substance: 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case: 3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant though such allegation was made in ignorance or inadvertently: 4th that the grant has become useless and inoperative through circumstances.

It was in 1889 the 5th clause was added in S. 50 of the later Act. In fact, some of the decisions under the old Act referred to the Explanation as the definition of the expression 'just cause'. See: In the matter of the petition of Bhobasoonduri Daber Nobeen Chunder Sil and Ors. v. Bhobo Soonduri Daber (I.L.R. 6 Cal. 460) and Bal Gangadhar Tilak's case (I.L.R. 26 Bom. 792). But, when S. 263 was enacted, the Legislature thought fit to introduce a change in the language, which

itself proves that the legislature did not intend the Explanation to be exhaustive. The words "just cause shall be deemed to exist where" would only mean that in cases where one of the circumstances set out in Clauses (a) to (e) is present, a legal fiction comes into existence to the effect that in such cases, there is just cause for revocation. If there are circumstances which do not fall within the ambit of Clauses (a) to (e) but which warrant or necessitate the revocation of the grant, the court is entitled to revoke the grant or annul the same even though there is no legal fiction. The discretion granted in the main Section to the court is in no way controlled by the Explanation as it reads in the present Section. It can also be said that the definition in the two old Acts was exhaustive while the definition in the present Act is only inclusive. The view expressed by the Calcutta High Court in Annoda Prosad Chatterjee 's cases, (I.L.R. 24 Cal 95), that the fact that the legislature added Clause (e) in 1889 i.e., eight years after the passing of the original Act, indicated that the legislature did not consider the Explanation to be merely illustrative, as otherwise, there would have been no necessity to add Clause (e) may be correct. But, once the legislature has chosen to change the wording of the Explanation and introduce a legal fiction, it goes without saying that the Legislature intended to alter the law that prevailed previously. Hence, under S. 263 of the present Act, the Explanation is only illustrative providing for a legal fiction in the cases set out in Clauses (a) to (e) and not exhaustive of the circumstances in which the grant may be revoked or annulled for just cause. Hence, we reject the main contention of the appellants that the respondents are bound to establish any one of the circumstances set out in Clauses (a) to (e) of the Explanation in S. 263 before seeking the revocation of the probate."

24. This Court is of the opinion that the observations made in the above quoted paragraph No.33 of the judgment of the Division Bench of the Madras High Court in the case of Gita alias Gita Ravi v. Mary Jenet James alias M.J. James and others (supra), appears to lay down the correct position of law as the true purport of the words "just cause shall be deemed to exist where" used in the explanation to Section 263 of the Succession Act have been understood and it has been held that wherever circumstances set out in explanations (a) to (e) of Section 263 of the said Act exist, a legal fiction comes into effect about "just cause" for revocation or annulment of grant. At the same time, there could be other circumstances which do not fall within explanations (a) to (e) to Section 263 of the Succession Act, but such circumstances would still warrant and result in revocation of the grant, thereby indicating that the explanation cannot be treated as exhaustive and it is only illustrative. This goes to the very root of the matter concerning the very jurisdiction of this Court while considering petitions seeking revocation or annulment of grants under Section 263 of the Succession Act.

25. This Court finds substance in the contention raised on behalf of the petitioner, by placing reliance on judgment of the Supreme Court in the case of S. Sundaram Pillai and others vs. V. R. Pattabiraman and others (supra), wherein the Supreme Court has deliberated upon the role of an explanation to a statutory

provision. In paragraph No.46 of the said judgment, it is held as follows:

"46. We have now to consider as to what is the impact of the Explanation on the proviso which deals with the question of wilful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in 'Interpretation of Statutes' while dwelling on the various aspects of an Explanation observes as follows:

"(a) The object of an explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute."

26. It is further held in paragraph No.53 of the said judgment as follows:

"53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is:-

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

27. This Court is of the opinion that the main substantive portion of the above quoted Section 263 of the Succession Act is "the grant of Probate or Letters of Administration may be revoked or annulled for just cause". The opening words of the explanation i.e. "just cause shall be deemed to exist where" clearly indicate that explanations (a) to (e) are circumstances and illustrations where a deemed fiction about existence of just cause arises, further indicating that it would not be appropriate to treat explanations (a) to (e) as exhaustive, since this would have the effect of whittling down the main substantive provision of Section 263 of the

Succession Act.

28. With great respect, I am unable to agree with the position of law laid down by the learned Single Judges of this Court in the case of *George Anthony Harris vs. Millicent Spencer* (supra) and *Sharad Shankarrao Mane and etc vs. Ashabai Shripati Mane* (supra). In fact, an important question regarding the very jurisdiction of this Court in the context of Section 263 of the Succession Act arises, which needs to be settled authoritatively by a Larger Bench of this Court. In this situation, there is no alternative but to take recourse to Rule 28 (C) of the Bombay High Court (Original Side) Rules, 1980, to refer questions for determination by a Larger Bench of this Court.

29. The following questions are formulated and referred to a Larger Bench:

(I) Whether explanations (a) to (e) to Section 263 of the Indian Succession Act, 1925, are exhaustive or illustrative, in the context of "just cause" for revoking or annulling grant of Probate or Letters of Administration?

(II) Whether circumstances not covered under explanations (a) to (e) to Section 263 of the Succession Act, 1925, can become the basis for "just cause" for the Court to revoke or annul grant of Probate or Letters of Administration?

(III) Whether the judgements of learned Single Judges of this Court in the cases of *George Anthony Harris vs. Millicent Spencer* [AIR 1933 Bom 370] and *Sharad Shankarrao Mane and etc vs. Ashabai Shripati Mane* [AIR 1997 Bom 275], lay down the correct position of law?

30. The papers be placed before the Hon'ble the Chief Justice for consideration and for placing the above formulated questions for consideration before a Larger Bench.

31. This Court is of the opinion that the petitioner has made out a strong prima facie case in his favour for grant of interim relief during the pendency of this petition. The petitioner is the brother of the deceased. The affidavits of the attesting witnesses placed on record with the testamentary petition show that they did not sign the subject Will in the physical presence of the testator, as they signed on the subject Will in India after it was allegedly signed and executed by the deceased testator in Ecuador and then sent to India. But for the negligence, oversight and mistake on the part of the advocate for the petitioner (original caveator), these and other aspects would have been contested in the probate proceedings. The Testamentary Court being a Court of conscience, these aspects assume great significance. Apart from making out a strong prima facie case in his favour, this Court is of the opinion that if interim stay as prayed is not granted, the petitioner is likely to suffer grave and irreparable loss, and that the balance of convenience is also in his favour.

32. Hence, during the pendency of the present petition, there shall be interim stay in terms of prayer clause (i), which reads as follows:

“(i) Pending the hearing and final disposal of the present Miscellaneous Petition, the effect and operation of the Probate dated 25th January, 2024 be stayed;”