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

**MISCELLANEOUS PETITION (L) NO. 34745 OF 2023
WITH
INTERIM APPLICATION (L) NO. 308 OF 2024
IN
TESTAMENTARY PETITION NO. 534 OF 2022**

Lata Rajesh Shetty @ Latha Rajesh Shetty ... Petitioner
Versus
Satish Surappa Poojari ... Respondent

Mr. B. G. Saraf a/w Samir A. Vaidya, Kaivalya Raul, Suyash Kalbhor and Shailesh Dubey for the Petitioner.

Mr. Madhav Shah a/w Mr. Ibrahim Shaikh for Respondent.

**CORAM: MANISH PITALE, J.
DATE : 21st FEBRUARY, 2024**

ORDER :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner is seeking revocation of letters of administration granted on 17th May, 2023. It is her case that she is entitled to invoke Explanations (a) and (b) to Section 263 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Succession Act'), in order to seek revocation of the grant.
3. The respondent i.e. the original petitioner in Testamentary Petition No. 534 of 2022, had filed the petition for grant of letters of administration with Will annexed. The respondent sought the grant in the context of Will dated 4th December, 2018. The

petitioner claims to be a beneficiary under the said Will. He claims to be related to the deceased from the side of the mother.

4. In the aforesaid petition filed by the respondent, the petitioner in the present revocation petition was also shown as one of the surviving legal heirs of the deceased. It was stated that she was the sister-in-law of the deceased and in the column pertaining to the address, it was submitted that her whereabouts were not known.

5. It appears that in such circumstances, the respondent caused publication of citation to the surviving heirs of the deceased, including the petitioner herein. The proof of publication along with an affidavit was placed on record. The department proceeded on the basis that despite service of citation, the heirs did not come forward to raise any objection and on that basis, the letters of administration with Will annexed were granted in favour of the respondent (original petitioner in the testamentary petition).

6. The petitioner in the present petition has sought revocation of the grant, on the ground that the respondent violated mandatory requirements of Rules 398, 399 and 400 read with Rule 445 of the Bombay High Court (Original Side) Rules, 1980 (hereinafter referred to as 'the said Rules').

7. The learned counsel appearing for the petitioner relied upon the said Rules and he submitted that unless the respondent

complied with Rule 399 of the said Rules and made an attempt to personally serve the citation, recourse to publication of citation under Rule 400 of the said Rules could not have been taken.

8. It was submitted that the respondent could not have been permitted to bypass Rule 399 of the said Rules by simply stating that the whereabouts of the petitioner herein, who was admittedly stated to be the sister-in-law of the deceased, were not known. On this basis, it was submitted that there was a substantial defect in the manner in which the petition for grant of letters of administration with Will annexed was proceeded with, giving rise to a ground for revocation under Section 363 of the Succession Act, apart from the fact that according to the petitioner the said grant was obtained on a basis of a false suggestion. The learned counsel appearing for the petitioner placed reliance on the judgment of this Court in the case of *Abhiraji Bansraj Singh v/s. Vimal Narsingh Bahadur Singh, 2010 (3) Mh.L.J. 28* and judgment in the case of *Kamal Prasad v/s. Kumud Vaidya, 2019 (4) Bom.C.R. 713*.

9. On the other hand, the learned counsel for the respondent submitted that when the whereabouts of the petitioner were not known and this was candidly stated in the petition filed for grant of letters of administration with Will annexed, the respondent had no other alternative but to approach the Prothonotary and Senior Master of this Court under Rule 400 of the said Rules, to seek

service of citation through publication. It was submitted that the Prothonotary and Senior Master of this Court did grant such permission and thereupon, citations were served through publication. It was submitted that in such a situation, there was substantial compliance with the relevant Rules and hence, no allegation of substantial defect or false suggestion can be made in the facts and circumstances of the present case. The learned counsel appearing for the respondent sought to read the aforesaid judgment of this Court in the case of *Kamal Prasad* (supra) in favour of the position taken by the respondent. Reference was also made to the order of the Division Bench of this Court arising from an appeal filed against the said judgment of the learned Single Judge of this Court in the case of *Kamal Prasad* (supra). It was submitted that observations made by the Division Bench of this Court while dismissing the appeal are relevant for the facts of the present case. On this basis, it was submitted that no ground was made out under Section 263 of the Succession Act to entertain the present petition.

10. Having heard the learned counsel for the rival parties, this Court is of the opinion that reference to Section 263 of the Succession Act would be relevant. The same reads as follows:

“Section 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.”

11. The petitioner in the present petition has specifically invoked Explanations (a) and (b) to Section 263 of the Succession Act to claim that the grant issued in favour of the respondent deserves to be revoked.

12. The petitioner claims to be the sister of the husband of the deceased. This is fortified by the statement made by the respondent himself in the testamentary petition at paragraph 9, wherein a table is included showing the legal heirs of the deceased. The respondent himself has described the petitioner as sister-in-law of the deceased. Therefore, the petitioner is related to the deceased through her husband and Section 15 of the Hindu Succession Act, 1956, does come into operation. The general rules of Succession in case of female Hindus under Section 15 of the Hindu Succession Act, 1956 specifically lay down that the heirs of the husband would have priority. In that sense, the petitioner

before this Court is certainly a legal heir of the deceased, and therefore, entitled to be served with citation in accordance with the procedure and law applicable to such cases.

13. The respondent in the testamentary petition stated that the whereabouts of the petitioner herein were not known. The testamentary petition did not state anything beyond the aforesaid description with regard to the address of the petitioner. The last known address of the petitioner was not stated by the respondent in the testamentary petition. No foundation was laid down to claim why the whereabouts of the petitioner were not known. This is crucial in the facts and circumstances of the present case. Before advertizing to the effect such a statement has on the facts of the present petition, it would be appropriate to refer to the relevant rules regarding service of citations. Rules 398, 399, 400 and 445 of the said Rules, read as follows:

***“398. Issue and return of processes.** – All processes and citations shall issue from and be returnable to the office of the Prothonotary and Senior Master and shall be prepared, signed and dated by him or one of his assistants and sealed executed and returned, in the same manner as processes in suits on the Original Side of the Court.*

***399. Service of citations** – Citations shall be served personally when possible. Personal service shall be affected by leaving a true copy of the citation with the party cited and taking his acknowledgement on the original.*

***400. Service by advertisement** – Citations which cannot be personally served as required by the last preceding rule shall be served by publishing the same in such local newspapers as the Prothonotary and Senior Master may direct.*

445. Sheriff to serve and execute process:- *The Sheriff shall execute the process of the High Court. He shall serve such process within the local limits of the Ordinary Original Civil Jurisdiction of the High Court by his bailiff or if the party so desires by registered post pre-aid for acknowledgement. Where the process is to be served beyond the said limits, the Sheriff shall serve the same by registered post pre-aid for acknowledgment. The Sheriff shall not be compellable to go in person or by his bailiff beyond the said limits for the purpose of serving or executing any process, unless so directed by the Court or the Judge.*

[In addition to above, Writ of Summons may be served as prescribed by Chapter VI (as amended) of these Rules.]”

14. A perusal of Rule 399 of the said Rules shows that the citations have to be served personally when possible. Rule 400 of the said Rules stipulates that citations which cannot be personally served as required by the last preceding Rule shall be served by publishing the same in local newspapers, as the Prothonotary and Senior Master of this Court may direct. In this context, the requirement of Rule 399 of the said Rules, as regards the manner of personal service assumes significance. Under the said Rule, personal service is to be affected by leaving a true copy of the citation with the parties cited and taking acknowledgment on the original.

15. Thus, in the first place, an attempt has to be made to personally serve the citation and only when the attempt made to personally serve the citation fails or it becomes impossible to serve personally, the petitioner can take recourse to Rule 400 of the said Rules by resorting to publication. It is crucial that under Rule 400 of the said Rules citation has to be published in “such local

newspapers as the Prothonotary and Senior Master may direct”.

16. This Court is of the opinion that the said words used in Rule 400 of the said Rules are crucial because the description of the address of the person cited becomes the basis for identifying the “local” newspapers in which publication of citation can be directed by the Prothonotary and Senior Master of this Court. In other words, the address of the person cited as legal heir of the deceased has to be stated and thereupon, when personal service on such an address is not possible, the Prothonotary and Senior Master of this Court can direct publication in “local” newspapers, which have circulation with reference to such an address.

17. If the contention raised on behalf of the respondent is accepted, there would be no reference for the Prothonotary and Senior Master of this Court to permit publication of citation in “local” newspapers. The whole purpose of publication of the citation is to ensure that an attempt is made to serve the citation on such a person at least on the last known address.

18. It is necessary in such cases for the petitioner in the testamentary petition to state at least the last known address of the person cited as a legal heir. By simply stating that the whereabouts of the person are not known, the petitioner in the said testamentary petition cannot be permitted to bypass the mandatory requirement of Rule 399 of the said Rules to personally serve the citation. The use of the words “when possible” have to

be interpreted to mean that citations are mandatorily required to be served on at least the last known address of the person cited as a legal heir of the deceased. This Court cannot countenance a situation where the petitioner in the testamentary petition simply states that whereabouts of the person cited are not known and thereupon, jumps to Rule 400 of the said Rules to seek service of citation through publication. If this is permitted, the Prothonotary and Senior Master of this Court will not have any basis or reference to allow publication of such citation in a “local” newspaper. Therefore, there is substance in the contention raised on behalf of the petitioner herein that the procedure in the present case while issuing grant in favour of the respondent suffered from substantial defect.

19. This Court is inclined to accept the contention based on Explanation (b) to Section 263 of the Succession Act, for the reason that when the respondent claimed in the testamentary petition that the petitioner herein was the sister-in-law of the deceased, all attempts ought to have been made by the respondent to find at least the last known address of the petitioner herein. By feigning ignorance about the whereabouts of the petitioner herein, it can be said that a false suggestion was made before this Court. Thus, on facts, both grounds raised on behalf of the petitioner seeking revocation of grant, are made out.

20. As regards the judgments relied upon by the rival parties,

suffice it to say that the judgment in the case of *Abhiraji Bansraj Singh* (supra) elaborates upon Rules 398, 399, 400 and 445 of the said Rules and the procedure contemplated under the said Rules, which support the contentions raised on behalf of the petitioner. In the case of *Kamal Prasad* (supra), the learned Single Judge of this Court found on facts that the petitioner in the testamentary petition therein had indeed given addresses of the persons cited as heirs of the deceased. Since service on the said addresses was not possible, the procedure of publishing citations under Rule 400 of the said Rules was resorted to. This Court on facts found that such publication in news papers having circulation in the area concerning the addresses stated in the petition, was sufficient compliance with the said Rules. On that basis, the revocation petition was dismissed.

21. The facts of the present case, as noted herein above, are distinguishable, for the reason that the respondent, as the original petitioner in the testamentary petition, did not even give the last known address of the petitioner.

22. Reliance placed on observations made by the Division Bench of this Court in the appeal arising from the said judgment of the learned Single Judge of this Court in the case of *Kamal Prasad* (supra), can also not come to the assistance of the respondent.

23. Reliance is specifically placed on paragraph 8 of the said judgment. This Court is of the opinion that the observations were

made in the backdrop of the fact that the petitioner in the testamentary petition therein had in fact given addresses of the persons who were cited as heirs of the deceased and when personal service was not possible, Rule 400 of the said Rules was invoked. Therefore, this Court finds that the facts of the present case are clearly distinguishable and reliance on the judgment of the Division Bench of this court cannot take the case of the respondent any further.

24. For the reasons stated herein above, the petition is allowed in terms of prayer clause (a), which reads as follows :

“(a) That the Grant of the Letters of Administration with the Will annexed dated 17th May, 2023 granted by this Hon’ble Court to the Respondent in Testamentary Petition 534 of 2022 may be forthwith revoked in the interest of justice.”

25. As a consequence, the testamentary petition filed for grant of letters of administration with Will annexed will have to be pursued by the respondent herein. The petitioner would be at liberty to take such steps as available in law.

26. Pending applications, if any, also stand disposed of.

MANISH PITALE, J.