

**IN THE HIGH COURT AT CALCUTTA**  
**(Testamentary & Intestate Jurisdiction)**  
**ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**IA No. GA 1 of 2024**

**With**

**IA No. GA 3 of 2025**

**In**

**PLA No. 84 of 2023**

**In The Goods Of :**

**Dilip Kumar Addy (Deceased)**

Mrs. Manju Agarwal, Sr. Adv.

Mr. Rohit Banerjee

Ms. Hritashree Biswas

Ms. Anju Manot

.... For the petitioner/executrix.

Mr. Suman Kumar Dutt, Sr. Adv.

Mr. Arkaprava Sen

Ms. Monica Jaiswal

Mr. Sayantan Kar

...For the caveatrix & applicant  
in GA/3/2025.

Hearing Concluded On : 20.02.2025

Judgment on : 19.03.2025

**Krishna Rao, J.:** -

1. The Executrix has filed an application being G.A. No.1 of 2024 praying for discharge of caveat filed by one Biswajit Addy on behalf of Smt. Ila Addy. Smt. Ela Addy through her Constituted Power of Attorney Shri Biswajit Addy has filed an application being G.A. No. 3 of 2025 praying for extension of time to file affidavit in support of Caveat.
2. Smt. Eepsita Addy, W/o Dilip Kumar Addy filed an application being PLA No. 84 of 2023 for grant of probate of the Last Will and Testament dated 27<sup>th</sup> December, 2012 of the deceased testator, namely, Dilip Kumar Addy. On 14<sup>th</sup> June, 2024, Smt. Ela Addy through her Constituted Power of Attorney, Shri Biswajit Addy has filed her Caveat in PLA No. 84 of 2023.
3. Mrs. Manju Agarwal, Learned Senior Advocate representing the executrix submits that the husband of the Executrix, has executed his last Will and Testament on 27<sup>th</sup> December, 2012 by appointing the petitioner as Executrix of his last Will and Testament. The petitioner being the Executrix has applied for grant of probate and in terms of the order passed by this Court, Special Citation was issued upon the caveat being the mother of the testator at the premises 97/1B, Hazra Road, Kolkata - 700 026. She submits that the matter was taken up for hearing on 29<sup>th</sup> April, 2024 and on the said date, the Learned Counsel

for the caveatrix undertakes to file Vakalatnama and this Court also directed the petitioner to serve a copy of the application to the Learned Advocate appearing for the caveatrix in course of the day. She submits that on the same day, the Advocate appearing on behalf of the caveatrix has sent a letter to the Advocate-on-record of the petitioner requesting to provide all the documents filed in the instant case. On the same day, the Learned Advocate has supplied the probate application to the Advocate-on-record of the caveatrix. On the same day, the Learned Advocate for the caveatrix again sent a communication informing that only probate application was served upon him and requested to supply all other documents in connection with the probate case.

- 4.** The matter was taken up for hearing on 13<sup>th</sup> May, 2024 and on the said date, the Learned Counsel for the caveatrix undertook to file Vakalatnama in course of the day. This Court directed the petitioner to serve the copy of affidavit-of-assets to the Advocate appearing for the caveatrix in course of the day. She submits that as per direction of this Court at 05.00 P.M., the clerk of the Advocate-on-record of the petitioner went to serve the affidavit-of-assets to the Counsel for the caveatrix but the office was closed and the Learned Advocate informed over phone that he is not in the Court area.
- 5.** Mrs. Agarwal submits that the caveatrix had filed a Partition Suit being T.S. No. 56 of 2023 along with an application for grant of injunction. In the injunction application, the petitioner has filed written objection by disclosing the fact of filing of the probate application by the petitioner

before this Court. On enquiry by the petitioner, the petitioner came to know that a Vakalatnama has been filed in the present proceeding on 14<sup>th</sup> June, 2024 by the Cavetarix through her constituted attorney Biswajit Addy with an undertaking that no Special Citation has been received by the Caveatrix.

- 6.** On 12<sup>th</sup> August, 2024, the Registrar, Original Side of this Court has issued a certificate to the petitioner intimating that the caveatrix has filed caveat and it was also informed that the caveatrix has not filed affidavit in support of caveat. It is further contended that no notice for filing of the Caveat has either been given by the Registrar, Original Side of this Court or the Advocate-on-record of the caveatrix to the petitioner.
- 7.** Mrs. Agarwal submits that the Caveat lodged by Mr. Biswajit Addy cannot be treated to be the caveat on behalf of the Caveatrix, she submits that the mother of the deceased is 96 years of old lady and she is unable to exercise her free will and consent and is under the clutches and custody of Biswajit Addy and his father. She submits that the undertaking made by Shri Biswajit Addy that no Special Citation has been served is incorrect.
- 8.** Mrs. Agarwal submits that affidavit in support of caveat is required to be filed within 8 days of filing of caveat but no affidavit in support of caveat has been filed, thus the caveat filed by the caveatrix through her Attorney be discharged.

9. Mrs. Agarwal in support of her submissions has relied upon the Judgement in the case of ***Ramjas Foundation and Another Vs. Union of India & Others*** reported in ***(2010) 14 SCC 38*** and submitted that the caveatrix has not come to Court with the clean hand by filing the application for condoning the delay in filing affidavit in support of caveat, the application is liable to be rejected.
10. Mrs. Agarwal also relied upon the Judgement in the case of ***N. Sthirasundari and Another Vs. V. Kalyani & Ors.*** reported in ***2013 (1) CTC 646*** and submitted that no affidavit in support of caveat is filed within the stipulated period of eight (8) days and thus the matter becomes non-contentious cause.
11. Mrs. Agarwal further relied upon the judgement in the case ***Mahesh Atalrai Keswani vs. Suresh Atalrai Keswani*** reported in ***2013 (5) Mh.L.J 825*** and submits that an affidavit in support of caveat shall be filed within eight days from the date of filing of caveat and copy of such affidavit shall be served by the caveator upon the petitioner and if such affidavit is not filed within the prescribed time, caveat shall not be prevented for grant of probate.
12. Mr. Suman Kumar Dutt, Learned Counsel for the caveatrix submits that the caveatrix came to know about the probate proceeding initiated by the petitioner when the notice was attempted to be served upon her elder son's residence situated at 97/1B, Hazra Road, Kolkata- 700026. He submits that during such service, the elder son of caveatrix, Samir

Kumar Addy had lost his elder son-in-law who was suffering from Cancer and was under medical treatment at AMRI Hospital, Dhakuria due to which service could not be effected.

- 13.** Mr. Dutt submits that the Power of Attorney holder of the nonagenarian caveatrix, being the grandson of the caveatrix visited the post office to get the notice collected, it was informed that the notice bears the name of Ela Addy and as such the same cannot be handed over to anyone else apart from addressee unless the concerned person can produce an authority to collect the same. He submits that the Power of Attorney holder of the caveatrix came to know that in the notice, the name of the caveatrix has been spelt out as Ila Addy instead of Ela Addy due to which the postal authorities reluctant to hand over such notice to the Power of Attorney holder of the caveatrix.
- 14.** Mr. Dutt submits that the address of the caveatrix is “Fort Oasis”, 37, Panditiya Road, Kolkata- 700 029 but the notice was sent to the caveatrix at the address of the elder son of the caveatrix. He submits that when the caveatrix came to know about the instant proceedings, the caveatrix has instructed the Constituted Attorney to enquire about the proceedings and on enquiry, the Attorney came to know about the proceeding and entered into the proceeding with an undertaking to file Vakalatnama. This Court directed the petitioner to serve the copy of probate application to the caveatrix and the copy of the same was handed over to the caveatrix.

15. Mr. Dutt submits that when the matter was taken up on 13<sup>th</sup> May, 2024, the Learned Counsel for the caveatrix informed this Court that the name of the caveatrix is not correctly mentioned due to which the department has not accepted Vakalatnama and the petitioner has not served the affidavit-of-assets to the caveatrix. He submits that till date the petitioner has not complied with the direction passed by this Court by supplying the copy of affidavit-of-assets. He submits that no citation was served in the residential address till date.
16. Mr. Dutt submits that the Caveatrix has filed her caveat on 14<sup>th</sup> June, 2024 but the caveatrix was not aware of the fact that if the probate proceeding only filing of the Caveat does not serve the purpose, after she was made aware of the rules relating to filing of the caveat as per Original Side Rules of this Court. He submits that immediately the Caveatrix has filed the present application.
17. Mr. Dutt submits that the caveatrix is the mother of the testator and is having the caveatable interest. He submits that unless the name of the caveatrix is corrected in the record of the instant proceedings and time to file affidavit in support of caveat is not extended, the caveatrix will suffer irreparable loss and injury.
18. Mr. Dutt relied upon the Judgment ***In the Goods of Nanda Lal Sett*** reported in ***1954 SCC OnLine Cal 133*** and submits that under the Rule of the Original Side Rules of the High Court, the caveator has to

file an affidavit which must not only disclose his right and interest in the estate of the deceased testator but also the grounds of objection.

19. Mr. Dutt also relied upon the Judgment in the case of ***In the Goods of Ganapati Sarkar and Ors Vs. Umarani Bose and Others*** reported in ***AIR 1959 Cal 277*** and submits that if the caveator is unable to give any reason for the delay, the Court can, nevertheless, allow the caveator to contest the Will by filing an affidavit in support of the caveat out of time and to condone the delay.
20. Special Citation was issued on 19<sup>th</sup> January, 2024 upon the caveatrix in the following address:

*Mrs. Ila Addy of 97/1B, Hazra Road, Kolkata – 700  
026, Police Station- Tollygunge.*

*As per the report of the Deputy Sheriff of Calcutta,  
the office received the undelivered packet with Postal  
Remark “U/C”.*

The Caveatrix has taken two stands for non-service of special citation i.e. the address appearing on the special citation is of her son's and her address is “Fort Oasis”, 37, Panditiya Road, Kolkata- 700029 and the her name spelt as “Ila” instead of “Ela”.

21. Learned Counsel for the executrix brought to the notice of this Court to the suit filed before the Learned Court of 4<sup>th</sup> Civil Judge, (Senior Division) at Alipore wherein the cavetrix is the plaintiff and in the said

suit, the name of the caveatrix is mentioned as “Ila Addy” and the address is “97/1B, Hazra Road, P.S. Tollygunge, Kolkata- 700026”.

- 22.** The Counsel for the Executrix has not argued that the endorsement of the Postal Authority as “Unclaimed” is good service. On contrary when the matter was taken up for hearing on 29<sup>th</sup> April, 2024, on the prayer made by the Counsel for the caveatrix, this Court directed the petitioner to serve the copy upon the Learned Advocate-on-record of the Caveatrix if the Learned Advocate made written request to the Counsel for the petitioner. Thus, whether special citation was sent to the caveatrix at the correct address or not cannot be a subject-matter in the present proceeding.
- 23.** As per the order dated 29<sup>th</sup> April, 2024, correspondences were made between the parties and the copy of probate application was served upon the Counsel for the caveatrix but copy of affidavit of assets was not supplied to the caveatrix. By an order dated 13<sup>th</sup> May, 2024, this Court directed the petitioner to serve copy of affidavit-of-assets to the Learned Counsel for the caveatrix.
- 24.** The main contention raised by the executrix that the caveatrix has filed caveat on 14<sup>th</sup> June, 2024 but no affidavit in support of caveat is filed within eight (8) days from the date of filing of the caveat. The case relied upon by the executrix in the case of ***Mahesh Atalrai Keswani (supra)***, in the said case, no application for condonation of delay in filing affidavit in support of caveat was filed. In the case of ***N. Sthirasundari***

*(supra)*, no application was filed seeking extension of time for filing an affidavit and there was no representation of the appellant and in the absence of affidavit setting out any grounds assailing the Will, the Court discharges the caveat. In the present case, though the executrix has filed an application for discharge of caveat filed by the caveatrix but simultaneously, the caveatrix has also filed an application for extension of time to file affidavit in support of caveat, thus the facts of this case is distinguishable from the facts of the cases relied by the executrix.

25. In the case of ***In the Goods of Ganapati Sarkar & Ors. (supra)***, the Coordinate Bench of this Court held that :

*“8. Taking the point of res judicata first: The only question that the Court was called upon to decide in an application for discharge of caveat is whether the caveator would be allowed to contest the probate proceedings. The caveator would be debarred from contesting the probate proceedings if he did not file his affidavit in support of the caveat within 8 days, as provided in Rule 25 Chapter 36 of the Rules of this Court, or if he had no interest in the estate of the deceased. Even if the caveator is out of time in filing his affidavit in support of caveat, the court has, under Rule 27, a discretion in the matter and can allow the caveator to contest the Will. Mr. A. N. Bose, appearing for the present applicant, contended that the Court will exercise its discretion in extending time to file affidavit in support of caveat when and only when there was an acceptable reason given for not filing the affidavit in support of the caveat in time. It no such reason is given by the caveator, the caveat must be discharged. I am unable to agree that the Court's discretion is limited as is suggested by Mr. Bose. In my view, even if the caveator is unable to give any reason for the delay, the Court can, nevertheless, allow the caveator to contest the Will by filing an affidavit in support of the caveat out of time and*

*condone the delay. In an application for discharge, the first and the most important question that a caveator is required to prove is that he has an interest in the estate of the deceased. If the caveator fails to give prima facie evidence of interest in the estate of the deceased, his caveat must be discharged in law.”*

In the present case, the caveatrix is the mother of the testator and the executrix is the daughter-in-law of the caveatrix. In para 3 of the Will, the testator has explained how he has got the share over the property. It is clear from the said paragraph that the testator has got his share in the property of his father through Will.

Considering the above, this Court finds that the caveatrix has the caveatable interest over the property and opportunity should be given to the caveatrix to file affidavit in support of her caveat.

- 26.** As regard to the allegation that the caveatrix has not approached this Court with the clean hand and is in clutches and custody of Biswajit Addy and his father, the petitioner/executrix will get an opportunity to cross-examine the caveatrix or her constituted attorney wherein the executrix can prove that the caveat and affidavit in support of caveat is not filed independently by the caveatrix and is filed on the instigation of Biswajit Addy and his father.
- 27.** Considering the above, this Court allows the caveatrix to file affidavit in support of caveat within 10 days from date. It is made clear that if the caveatrix failed to file affidavit in support of caveat within 10 days from date, the caveat filed by the caveatrix will automatically discharged. If

the caveatrix files affidavit in support of caveat within 10 days, the probate application will be treated as contentious cause and the department is directed to provide Testamentary Suit number. The executrix is directed to take appropriate steps to correct the name of the caveatrix within a week from the date of receipt of affidavit in support of caveat.

**28. G.A. No.1 of 2024 is dismissed. G.A. No. 3 of 2025 is allowed.**

**(Krishna Rao, J.)**