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

**APPEAL NO.138 OF 2024
IN
MISCELLANEOUS PETITION NO.18 OF 2018
IN
PETITION NO.445 OF 2008**

Nandkumar Narsingrao Pupala
since deceased through legal heirs
Shakuntala Nandkumar Pupala and Ors. .. Appellants

Versus

Dr.Pratapsingrao Pupala .. Respondent

**Mr.Zubin Behramkamdin, Senior Advocate, Mr.Shubham Jadhav,
Ms.Sakshi Kashyap, Ms.Meiron Damania i/b M/s.Divekar & Co.,
Advocate for the Appellants**

**Mr.Fredun Devitre, Senior Advocate a/w Ms.Alpana Ghone, Mr.Paresh
Shah, Ms.Meghna Mehta i/b M/s.Shah & Sanghavi, Advocates for the
Respondent**

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

**RESERVED ON: FEBRUARY 5, 2026
PRONOUNCED ON: MARCH 6, 2026**

JUDGEMENT (Per FIRDOSH P. POONIWALLA,J.):-

1. The present Appeal challenges the Order dated 19th August, 2019, passed by a Learned Single Judge of this Court dismissing Miscellaneous Petition No.18 of 2018 of the Appellants, as corrected by the Order dated 5th September, 2019, and also the Order dated 21st August, 2009, dispensing with service of citation of Testamentary Petition No. 445 of 2008.

2. Miscellaneous Petition No.18 of 2018 was filed seeking the following final reliefs:

“(a) that this Hon'ble Court be pleased to revoke and set aside and annul the Letters of Administration De-Bonis granted to the Respondent dated 17.09.2009 in Testamentary Petition No. 445 of 2008 and the Probate granted on 27th September, 1984 in Testamentary Petition 11 of 1976.”

3. It is important to note that, although Order dated 21st August 2009, dispensing with service of citation in Testamentary Petition No. 445 of 2008 upon Nandkumar Pupala and other next of kin of the deceased Narsingrao Pupala has not been challenged in Miscellaneous Petition No.18 of 2018, it is sought to be challenged in the present Appeal.

4. Before we consider the rival contentions of the parties in the Appeal, it would be necessary to set out the facts in the matter.

FACTS

- a. On 18th October 1940, Vijaykumar (“Vijay”), eldest son of Narsingrao, was born. On 8th November 1942, the original Appellant/Petitioner, Nandkumar (“Nandu”) was born.
- b. On 20th April 1951, Narsingrao filed Suit No.438 of 1951 in this Court, *inter alia*, praying that he and his brother (and heirs of a deceased brother) each had a 1/3rd share in properties settled in Trust under a registered Trust Deed dated 4th March 1927.
- c. On 8th November 1951, a preliminary decree was passed in the said Suit declaring the 1/3rd share of each of the three branches (Narsingrao, Vithoba and Shankarrao) in the Trust properties. Court Receiver was appointed of the Trust properties with all powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908, including sale.
- d. On 20th August 1953, the Respondent-Pratap was born.
- e. On 7th March 1974, Narsingrao made his Last Will and Testament appointing (i) Dr.Jal Patelsaheb (ii) Pravin V. Hazarat and (iii) his wife Sudhabai as the Executors / Executrix of the Will. Sudhabai

and Pratap are the only beneficiaries under the said Will, each with a 50% equal share. Detailed provisions were made in the Will as to why no bequest was made to any of the other children.

f. On 18th March 1974, Narsingrao passed away. On 25th November 1975 /13th January 1976, Sudhabai (widow of Narsingrao) and Pravin Hazarat, as Executors of the Will dated 7th March 1974 of Narsingrao, filed a Petition in this Court, being Petition No.11 of 1976, for grant of Probate of the said Will of Narsingrao.

g. All the children of Narsingrao, except the two sons, Vijay and Nandu, filed Consent Affidavits giving their no objection and consent to grant of probate to the said Will of Narsingrao.

h. On 3rd July 1976 / 15th July 1976, Nandu (the original Appellant) filed a Caveat and Supporting Affidavit objecting to the grant of Probate of the Will. In light of this development, Petition No.11 of 1976 was converted into Suit No.22 of 1976.

- i. On 19th July 1976 / 26th July 1976, Vijay filed a Caveat and Supporting Affidavit objecting to the grant of Probate of the Will. Thereupon Petition No.11 of 1976 was converted into Suit No.24 of 1976.
- j. On 17th November 1976, Nandu addressed a letter to his Advocates informing them that he wished to withdraw the Caveat filed by him objecting to the Probate being granted in respect of the said Will of Narsingrao.
- k. In 1976, Nandu also signed a letter addressed to the Prothonotary and Senior Master of this Court in Petition No.11 of 1976, confirming the said Will of Narsingrao, stating that he had read the Petition and the Schedule of Assets annexed thereto and had no objection to the Probate of the said Will being granted. The said letter also records that Nandu had filed a Caveat which he had since withdrawn.
- l. On 7th January 1977, Nandu filed his Affidavit in a Rent Act Suit, being R.A.E.Suit No.130/836 of 1970, filed by him against a tenant, *inter alia*, stating on oath that earlier he was not aware that the deceased Narsingrao had left behind a Will, and therefore, he had stated that the

said deceased died intestate but that he had now seen the said Will and confirmed that the Application for grant of Probate was pending in the Court. He accordingly agreed that Sudhabai be joined as a party to the said Suit.

m. On 14th April 1978, an Order was passed by this Court directing issue of Probate of Narsingrao's said Will in T&IJ Suit No.22 of 1976 to the Executors Sudhabai and Pravin Hazarat, and Nandu's caveat was dismissed.

n. On 14th April 1978, a similar Order was passed in T&IJ Suit No.24 of 1976 recording the statement of Vijay's Advocate that he desires to withdraw the Caveat and apply for dismissal of the Caveat. Accordingly, Vijay's caveat was also dismissed.

o. On 1st April 1980, Pravin Hazarat, one of the executors, passed away.

p. On 24th August 1984, Sudhabai (the widow of Narsingrao) made her Last Will and Testament in Marathi and registered it with the Office

of the Sub-Registrar of Assurances at Bombay. Pratap is the sole beneficiary under this Will.

q. On 27th September 1984, a Probate was issued by this Court to Sudhabai, the sole surviving Executrix of the said Will of Narsingrao.

r. Sudhabai commenced administration of the estate of Narsingrao and took several steps in that regard including collecting and depositing rents into the estate account, having the revenue receipts transferred to her name as Executrix, having the MCGM lease of two properties transferred to her name as Executrix and appointing Advocates and taking legal steps against tenants.

s. On 12th February 2006, Sudhabai, the sole surviving Executrix of Narsingrao's probated will, passed away.

t. On 10th May 2006, proceedings were adopted by Pratap, *inter alia*, by way of Chamber Summons No.650 of 2006, for amendment of Suit No.438 of 1951 on the basis of the said Probated Will of Narsingrao. Specific reference was made to the grant of Probate of

Narsingrao's will to Sudhabai. Deletion of names of other family members was sought and granted. Chamber Summons No.650 of 2006 was allowed by Order dated 7th February 2014. The said Order records that all parties were served, but no reply was filed.

u. On 5th September 2006 / 20th September 2006, Pratap filed T&IJ Petition No.780 of 2006 for grant of Probate of the last will and testament dated 24th August 1984 of Sudhabai. Nandu filed a Caveat and Supporting Affidavit in the said Petition in 2010. Sons of Vijay (Samar and Baiju) filed a Caveat and Supporting Affidavit. The Petition was converted into Testamentary Suit No.5 of 2011 and is pending.

v. On 1st February 2007, Vijay passed away.

w. On 30th April 2008, Pratap filed Testamentary Petition No.445 of 2008, under Section 258 of the Indian Succession Act 1925 ("the Succession Act") for grant of Letters of Administration *De-Bonis-Non* (with the Probated Will annexed) in respect of the unadministered estate of Narsingrao as Sudhabai had died before fully administering the estate of Narsingrao.

x. On 18th August 2009, a praecipe was filed by Pratap, as the Petitioner in the said Petition, for dispensing with fresh notice / citation to be served on the other legal heirs of Narsingrao since all legal heirs had given their consent for grant of the original Probate. Four of the six legal heirs had given consent by way of Consent Affidavits at the outset and two other legal heirs had given consent by withdrawing their caveats. By an Order dated 21st August 2009 passed by this Court in Testamentary Petition No.455 of 2008, the service of citation was dispensed with.

y. On 17th September 2009, Letters of Administration *De-Bonis-Non* (with Probated Will annexed), were issued by this Court to Pratap as the son and sole surviving legatee of Narsingrao under his Probated Will.

z. On 1st June 2010 and 2nd June 2010, public notices were issued on behalf of Pratap in three newspapers (Gujarati and English) specifically stating that Letters of Administration *De-Bonis-Non* (with Probated Will of Narsingrao annexed) were granted to Pratap by this Court.

aa. On 15th June 2010, five separate deeds of transfer were executed and registered with the Sub-Registrar of Assurances at Mumbai by Pratap transferring 50%, undivided share, right, title and interest in each of the various properties of Narsingrao bequeathed to him under Narsingrao's Probated Will.

bb. On 3rd July 2010 / 20th July 2010, a letter were addressed by the Advocates for Samar and Baiju (Sons of Vijay) responding to Pratap's Public Notice and claiming that the properties were ancestral properties. The said letter claims that Samar and Baiju (sons of Vijay) were unaware of Narsingrao's Will and of the Probate granted in respect thereof, and that they were also unaware of Sudhabai's Will.

cc. On 9th September 2010, 30th September 2010 and 19th December 2013 proceedings were adopted by Pratap in Suit No.438 of 1951 seeking amendment of the Plaint, *inter alia*, in light of the subsequent deaths of some of the parties. The facts regarding Sudhabai not having fully administered the estate of Narsingrao during her life time and the application for, and grant of, Letters of Administration De-Bonis-Non on 17th September 2009 were set out.

dd. On 7th March 2013 / 15th March 2013, a Petition for Revocation of Letters of Administration *De-Bonis-Non* (with Will annexed) was declared and lodged by Samar and Baiju (sons of Vijay), and two years later, the said Petition was numbered as Misc.Petition No.27 of 2015.

ee. On 27th November 2017 / 5th December 2017, the present Misc. Petition was filed by Nandu. The Petition sought revocation of the Probate dated 27th September 1984 of Narsingrao's Will granted in Petition No.11 of 1976 and of the grant of the Letters of Administration *De-Bonis-Non* dated 17th September 2009 granted in Petition No.445 of 2008 on the ground that the Will of Narsingrao was forged and fabricated and that the Caveat was withdrawn due to continuous 'harassment' and 'duress' by Pratap.

ff. On 7th March 2019, an Affidavit in Reply was filed by Pratap. On 8th August 2019, an Affidavit in Rejoinder was filed by Nandu. Finally, Misc. Petition No. 18 of 2018 was heard by the Learned Single Judge and by the impugned Order dated 19th August 2019, as corrected by the Order dated 5th September 2019, he dismissed the Misc. Petition on the ground of delay as well as on merits.

SUBMISSIONS OF THE APPELLANTS

5. In this factual backdrop, Mr. Zubin Behramkamdin, the learned Senior Counsel appearing on behalf of the Appellants, made submissions in support of the Appeal.

6. Mr. Behramkamdin submitted that by virtue of Section 259 of the Succession Act, and Rules 397 and 399 of the Bombay High Court (Original Side) Rules, 1980, it was mandatory that the citation in respect of T&IJ Petition No.445 of 2008 should have been served on Nandu. Mr. Behramkamdin submitted that the Learned Single Judge failed to appreciate the same. Mr. Behramkamdin further submitted that since the Citation was not served on Nandu, the Learned Single Judge ought to have set aside and annulled the Grant of Letters of Administration made in favour of Pratap, and, consequently, the Probate granted on 27th September 1984.

7. Mr. Behramkamdin further submitted that the Learned Single Judge erred in relying upon the Order dated 21st August 2009 passed by this Court dispensing with service of citation upon the next of kin, though the

said Order was passed ex-parte, without notice to Nandu, on the praecipe dated 18th August 2009, of Pratap.

8. Mr. Behramkamdin further submitted that the said Order dated 21st August 2009 is contrary to Section 259 of the Succession Act, which makes it compulsory for Pratap to serve the citation of the Petition upon Nandu and which could not have been dispensed with by the Learned Single Judge.

9. Mr. Behramkamdin further submitted that the Learned Single Judge failed to appreciate that Section 259 of the Succession Act does not carve out an exception in respect of cases where the Grant is obtained by consent or by withdrawal of the Caveat nor is there any Explanation or Proviso to the said Section making Section 259 inapplicable in the cases of Grant by consent or withdrawal of Caveat.

10. Mr. Behramkamdin further submitted that the Learned Single Judge failed to appreciate that the attention of the Learned Single Judge passing the Order dated 21st August 2009, dispensing with the service of citation, was not invited to the provisions of Sections 258 and 259 of the Succession Act.

11. Mr. Behramkamdin further submitted that the Learned Single Judge erred in holding that the Appellant was not entitled to the service of citation of T&IJ Petition No.445 of 2008 because Nandu had consented by way of withdrawal of the Caveat.

12. Further, as far as the delay is concerned, Mr. Behramkamdin submitted that the Learned Single Judge failed to appreciate that the delay in filing of the Petition had been satisfactorily explained by Nandu and that it was not necessary that a prayer for condonation of delay is made in the Petition.

13. Mr. Behramkamdin also submitted that the Learned Single Judge failed to appreciate that time will not start running against Nandu till the knowledge of the filing of the Petition and the Order passed thereon, and in view thereof, there was not much delay in filing the Miscellaneous Petition.

14. In support of his submissions, Mr. Behramkamdin relied upon the judgements of this Court in *Pooja Deepak Patil vs. Savita Vasant Rao*

Patil, (2018) SCC OnLine BOM 3879 and in *Dr.Dishah Dhunjishah Gagrati vs. Viloo Byramji Plumber & Anr., 2010 (1) ALL MR 231.*

SUBMISSIONS OF THE RESPONDENT

15. On the other hand, Mr. Fredun Devitre, the learned Senior Counsel appearing on behalf of Pratap (the Respondents), opposed the Appeal.

16. Mr. Devitre submitted that Section 259 of the Succession Act states that in granting Letters of Administration of the estate not fully administered, the Court “shall be guided” by the same rules as applied to original grants, and shall grant Letters of Administration to those persons only to whom original grants might have been made.

17. Mr. Devitre submitted that the use of the word “guided” in Section 259 showed that it was not mandatory to serve the citation and that the service of the Citation could be dispensed with, as had been done correctly by the Order dated 21st August 2009.

18. Mr. Devitre submitted that, in the present case, there was all the more reason for dispensing with the service of the citation, since Nandu, after the filing of the Caveat objecting to the grant of Probate of the Will dated 7th March 2024 of Narsingrao, in Petition No.11 of 1976, did the following :

a. By a letter dated 17th November 1976 addressed to his Advocates (Manilal Kapadia & Co.), Nandu informed them that he would like to withdraw the Caveat filed by him objecting to the Probate being granted in respect of the said Will dated 7th March 1974 of Narsingrao.

b. Nandu signed a letter to the Prothonotary and Senior Master in the said Petition No.11 of 1976, confirming the said Will of Narsingrao, stating that he had read the Petition and the Schedule of Assets annexed thereto and had no objection and consented to the Probate of the Will being granted. The said letter also records that Nandu had filed a Caveat, which he had since withdrawn.

c. Nandu filed an Affidavit in the Rent Act Suit, being R.A.E.Suit No.130/836 of 1970 filed by him against a tenant,

interalia, stating on oath that, earlier, he was not aware that the deceased Narsingrao had left behind a Will, and, therefore, he stated that the said deceased died intestate, but that he had seen the said Will dated 7th March 1974 and confirmed that the Application for Probate was pending in the Court. He, accordingly, agreed that Sudhabai was to be joined as a party to the said Suit.

19. Mr. Devitre submitted that, for the aforesaid reasons, the Learned Single Judge had correctly dismissed the Miscellaneous Petition filed by Nandu on merits.

20. Mr. Devitre also referred to an Order dated 8th March 2021 passed by a Learned Single Judge of this Court wherein, in a Petition filed under Sections 258 and 259 of the Succession Act, the service of fresh Citation was dispensed with.

21. Mr. Devitre further submitted that, on 10th May 2006, proceedings had been adopted by Mr. Pratap, *interalia*, by way of Chamber Summons No.650 of 2006, for amendment of Suit No.438 of 1951, on the basis of the said Probated Will of Narsingrao. Specific reference was made to

the grant of Probate of Narsingrao's will to Sudhabai, who expired leaving her Will dated 24th August 1984 under which Pratap is the sole beneficiary. The deletion of names of other family members, including that of Nandu, was sought and granted. The said Chamber Summons was allowed by an Order dated 7th February 2014. Mr. Devitre pointed out that the said Order records that all parties were served but no Reply was filed.

22. Further, Mr. Devitre submitted that Pratap had filed a T&IJ Petition No.445 of 2008 under Section 258 of the Succession Act for Grant of Letters of Administration *De-Bonis-Non* (with the Probated Will annexed) in respect of the unadministered estate of Narsingrao, as Sudhabai had died before fully administering the estate.

23. Mr. Devitre further pointed out that in the said Testamentary Petition, a praecipe was filed by Pratap as Petitioner, for dispensing with fresh notice / citation to be served on the other legal heirs of Narsingrao, since all his legal heirs had given their consent for grant of Probate. Four of the six legal heirs had filed Consent Affidavits at the outset and two other legal heirs, including Nandu, had given consent by withdrawing their Caveats.

24. Mr. Devitre pointed out that, by an Order dated 21st August 2009 passed by this Court in T&IJ Petition No.445 of 2009, this Court correctly dispensed with the service of a fresh citation.

25. Further, Mr.Devitre submitted that, on 17th September 2009, Letters of Administration *De-Bonis-Non* (with the Probated Will annexed) were issued by this Court to Pratap, as the son and sole surviving legatee of Narsingrao under his Probated Will.

26. Mr. Devitre submitted that public notices were issued on behalf of Pratap in three newspapers (Gujarati and English) specifically stating that the Letters of Administration *De-Bonis-Non* (with Probated will of Narsingrao annexed) were granted to Pratap by this Court.

27. Mr. Devitre further submitted that, five separate Deeds of Transfer were executed and registered with the Sub-Registrar of Assurances at Bombay by Pratap transferring 50% undivided share, right, title and interest in each of the various properties of Narsingrao bequeathed to him under his Probated Will.

28. Further, Mr. Devitre submitted that proceedings were adopted by Pratap in Suit No.438 of 1951 seeking amendment of the Plaint, *inter alia*, in light of the subsequent deaths of some of the parties. The facts regarding Sudhabai not having fully administered the estate of Narsingrao during her life time and the Application for, and grant of, Letters of Administration, *De-Bonis-Non* on 17th September 2009 was set out.

29. Mr. Devitre submitted that, in light of the aforesaid, Nandu cannot contend that he came to know about the filing of T&IJ Petition No.445 of 2008 and the Grant dated 17th September 2009 only few months back when Miscellaneous Petition No.27 of 2015 filed by Samar and Baiju, sons of Vijay, was clubbed with the Testamentary Suit in respect of the Will of Sudhabai by this Court.

30. Mr. Devitre further submitted that the other reasons given by Nandu for not filing the Miscellaneous Petition earlier, namely, harassment caused by Pratap and that Nandu's sons were young at that time, are also bogus and cannot be given countenance to. Mr. Devitre submitted that, in the light of the same, the Learned Single Judge was correct in dismissing the Miscellaneous Petition also on the ground of delay.

ANALYSIS AND FINDINGS

31. On merits, the Learned Single Judge came to the finding that, in the facts of the case, there was no merit in the contention that a fresh citation was required to be issued. Citation was specifically dispensed with. The Learned Single Judge held that, in this view, no case was made out for entertaining the Miscellaneous Petition, and, therefore, dismissed the same.

32. On merits, it is the case of the Appellants that, by virtue of Sections 258 and 259 of the Succession Act, the service of citation is mandatory and cannot be dispensed with by this Court. In this context, Mr. Behramkamdin submitted that, as per Section 259 of the Succession Act, in granting Letters of Administration of an estate not fully administered, the Court has to be guided by the same rules as applied to original grants.

33. Mr. Behramkamdin submitted that the Rule which applies to the original grant is Rule 397 of the Bombay High Court (Original Side) Rules, 1980. Mr. Behramkamdin submitted that Rule 397 of the Bombay High Court (Original Side) Rules, 1980 provided that, in all Applications for Probate, Letters of Administration and Succession Certificate, notice of the application shall be given to all the heirs and next of kin of the deceased

mentioned in the Petition, except to those whose consent has been filed in the proceedings. Further, in all applications for Probate and Letters of Administration, the Citation shall be affixed on some conspicuous part of the Court house and also in the office of the Collector of Bombay.

34. Mr. Behramkamdin submitted that, therefore, before granting Letters of Administration under Sections 258 and 259, service of Citation on Nandu was mandatory, and since the Citation had not been served on Nandu, the said grant of Letters of Administration needs to be revoked.

35. Before deciding this issue, it would be appropriate to set out Sections 258 and 259 of the Succession Act and the said Rule 397 which read as under:

“258. Grant of effects unadministered. If an executor to whom Probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

259. Rules as to grants of effects unadministered. In granting Letters of Administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant Letters of Administration to those persons only to whom original grants might have been made.”

“397. Notice of next-of-kin

(1) In all applications for Probate, Letters of Administration and succession Certificate, notice of the application shall be given to all the heirs and next-of-kin of the deceased mentioned in the petition except to those whose consent has been filed in the proceedings.

(2) In all applications for Probate and Letters of Administration the Citation shall be affixed on some conspicuous part of the Courthouse and also in the office of the Collector of Bombay.

(3) In all applications for succession certificate, notice of the application shall be affixed on some conspicuous part of the Courthouse.

(4) No grant of Probate, Letters of Administration or succession certificate shall be made until after the expiry of fourteen clear days from the date of the service of the Citation or notice, and from the publication thereof in newspapers, if any, and from the affixing thereof on the courthouse and in the Collector's Office as the case may be, unless the Judge in Chambers otherwise directs."

36. In order to answer the question, as to whether the service of Citation can be dispensed with, it is important to consider the nature of the application being made under Sections 258 and 259 of the Succession Act. Sections 258 and 259 of the Succession Act deal with a situation where the Executor, to whom Probate has been granted, has died, leaving a part of the testator's estate unadministered. Section 258 provides that, in these circumstances, a new representative may be appointed for the purpose of administering such part of the estate. Section 259 provides that in granting Letters of Administration of an estate not fully administered, the Court shall be guided by the same Rules as applied to original grants, and shall grant

Letters of Administration to those persons only to whom original grants might have been made.

37. Therefore, when an application is made under Sections 258 and 259 of the Succession Act, there already exists a Probate which has been granted in respect of the Will. Whilst granting the said Probate, citations are served on the next of kin whose consent is not filed in the proceedings. Further, if some next of kin oppose the granting of Probate by filing a Caveat and an Affidavit in support of the Caveat, the Court would have considered the same, and despite the objections raised in the Caveat, would have granted the Probate. After granting of Probate in the aforesaid manner, if the Executor to whom the Probate has been granted dies, leaving a part of the testators' estate unadministered, then an Application is made under Sections 258 and 259 for granting Letters of Administration to those persons only to whom the original grants might have been made. In these circumstances, Sections 258 and 259 only provide for appointing another person, as referred to in Section 259, to administer the remaining part of the testators' estate.

38. In our view, in light of the same, and since all objections from the next of kin, if any, would have been considered whilst granting the

original Probate, the serving of a citation to the next of kin can be dispensed with in a Petition filed under Sections 258 and 259.

39. In the aforesaid circumstances, in our view, this Court was correct in dispensing with the citation by the Order dated 21st August 2009.

40. As far as the judgment of ***Pooja Deepak Patil (Supra)*** referred to by Mr. Behramkamdin is concerned, Paras 110 and 111 of the same read as under:

“110. A perusal of the Bombay High Court (Original Side) Rules, 1980 and more particularly Chapter XXVI which deals with the Rules relating to the proceedings under the Testamentary and Intestate proceedings does not indicate any provision for dispensing with the consent of any heir and next-of-kin who is entitled to be served with Citation. Under Rule 397, the notice of application is mandatory to be issued upon all the heirs and next-of-kin of the deceased mentioned in the petition except those whose consent has been filed in the proceedings. In this case, the petitioner who was the only heir and next-of-kin of the said deceased Mr. Deepak Vasantrao Patil had admittedly not filed any consent affidavit in favour of the respondent no. 1 (original petitioner) giving her consent for waiver of Citation or for grant of Letters of Administration or Probate in favour of the respondent no. 1.

111. This Court in the case of Captain Makhan Lal Barua alia M.L. Barua (deceased) Sunita Barua (supra) has dealt with Rules 397, 399, 401 and 402 of the Bombay High Court (Original Side) Rules, 1980 read with Section 148A of the Code of Civil Procedure, 1908 and has held that all the heirs or next-of-kin of the deceased mentioned in the petition have to be served with the notice as prescribed under Rule 397 of the Rules. Citation has to be served upon such heirs and next-of-kin mentioned in the petition personally when possible. This Court

has held that since the Citation had not been served upon the heirs and next-of-kin mentioned in the petition, time to file caveat under Rule 401 did not commence.”

41. *Pooja Deepak Patil (Supra)* is not a case where an Application was made for Letters of Administration under Sections 258 and 259 of the Succession Act. This was a case in respect of the grant of the original Probate. Thus, this case is clearly distinguishable on facts and does not take the case of the Appellants any further.

42. For the aforesaid reasons, in our view, the Learned Single Judge was right in holding that the service of the Citation has been dispensed with, and, therefore, there is no merit in the Miscellaneous Petition filed by Nandu.

43. As far as the Learned Single Judge dismissing the Miscellaneous Petition on the ground of delay is concerned, the case seeking condonation of delay in the Miscellaneous Petition is that in view of the harassment caused by Pratap and since Nandu's sons were young at that time, Nandu could not file Miscellaneous Petition earlier. Further, it is also the case of Nandu that he came to know about the filing of T&IJ Petition No.445 of 2008 and the Grant dated 17th September 2009 only a few months back when Miscellaneous Petition No.27 of 2015 filed by Samar and Baiju (sons of Vijay)

was clubbed with the Testamentary Suit for the Will of late Sudhabai by this Court.

44. As far as Nandu's case that he could not file the present Miscellaneous Petition earlier, in view of the harassment caused by Pratap is concerned, Nandu has not produced any evidence of the alleged harassment caused by Pratap, and, therefore, the said case of Nandu cannot be accepted. Further, as far as Nandu's case of his sons being young is concerned, the same cannot be a ground for not filing the Miscellaneous Petition earlier.

45. Further, it cannot be believed that Nandu got knowledge of the filing of T&IJ Petition No.445 of 2008 only when Miscellaneous Petition No.27 of 2015 was clubbed with the Testamentary Suit for the Will of late Sudhabai by this Court, for the following reasons:

a) After obtaining Letters of Administration *De-Bonis-Non* (with Probated Will annexed), on 17th September 2009, on 1st June 2010 and 2nd June 2010, public notices were issued on behalf of Pratap in three newspapers (Gujarati and English) specifically stating that the Letters of Administration *De-Bonis-Non* (with Probated Will of Narsingrao annexed) was granted to Pratap by this Court.

b) On 15th June 2010, five separate deeds of transfer were executed and registered with the Sub-Registrar of Assurances at Mumbai by Pratap transferring 50%, undivided share, right, title and interest in each of the various properties of Narsingrao bequeathed to him under Narsingrao's Probated Will.

c) On 3rd July 2010 and 20th July 2010, letters were received from the Advocates for Samar and Baiju (Sons of Vijay) responding to Pratap's Public Notice and claiming that the properties were ancestral. The fact that Samar and Baiju had seen and responded to the public notice shows that they were aware of the said Letters of Administration *De-Bonis-Non* being granted to Pratap.

d) After the grant of Letters of Administration *De-Bonis-Non* to him, proceedings were adopted by Pratap in Suit No.438 of 1951 seeking amendment of the Plaint in the light of the subsequent deaths of some of the parties. The facts regarding Sudhabai not having fully administered the estate of Narsingrao during her life time and the fact regarding application for, and grant of, Letters of Administration *De-Bonis-Non* on 17th September 2009, were set out in these proceedings.

e. In 2013, a Petition for revocation of Letters of Administration *De-Bonis-Non* was declared and lodged by Samar and Baiju (sons of Vijay) and two years later, was numbered as Miscellaneous Petition No. 27 of 2015.

46. In the aforesaid circumstances, and for the reasons stated hereinabove, it cannot be believed that Nandu came to know of the T&IJ Petition No.445 of 2008, and the grant of Letters of Administration *De-Bonis-Non* therein, only a few months before the filing of the Miscellaneous Petition by him.

47. In these circumstances, the Learned Single Judge has correctly dismissed the Miscellaneous Petition on the ground of delay also.

48. For all the aforesaid reasons, no interference is called for in the impugned order dated 19th August 2019, as corrected by the Order dated 5th September 2019. Further, for all the reasons stated hereinabove, the Order dated 21st August 2009, dispensing with service of Citation in T&IJ Petition

No.445 of 2008, also does not require any interference. We, accordingly, dismiss the Appeal.

49. In our view, the Appeal filed by the Appellants is frivolous, and therefore, deserves to be dismissed with costs. However, purely because of the persuasive skills of Mr. Behramkamdin, we refrain from doing so. In these circumstances, there shall be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]