

**A creditor of a deceased undischarged insolvent does not have a Caveatable interest to oppose the grant of probate if they dispute the very existence of the estate or the testamentary capacity of the testator**

The **Bombay High Court** in the case of **Shaunak Harshad Choksi vs Ketan Kishoredas Mehta [Interim Application No. 2807 of 2024]** dated April 06, 2026, has ruled that a creditor of a deceased undischarged insolvent does not have a Caveatable interest to oppose the grant of probate if they dispute the very existence of the estate or the testamentary capacity of the testator, as such a person is a stranger to the probate proceedings.

The Court emphasised that the surplus remaining after the payment in full of the creditors and expenses under Section 76 of the Presidency Towns Insolvency Act, 1909 constitutes the estate of the deceased, in respect of which an executor can maintain a petition for probate under the Indian Succession Act, 1925. The maintainability of a testamentary petition seeking grant of probate cannot be questioned on the ground that the deceased was an undischarged insolvent.

The Court observed that the application for condonation of delay was filed after a period of almost four years on 8th November 2022, without any explanation for the delay and without any prayer for condoning the delay of almost four years in filing the Interim Application itself. The Court explained that under Article 137 of the Limitation Act, the period of limitation for filing the application is three years, and in the absence of any explanation, the application is barred by limitation.

Further, the Court observed that under Section 70 of the Insolvency Act, the property of the insolvent vests in the Official Assignee, but under Section 76, the insolvent shall be entitled to any surplus remaining after payment in full of the creditors. The surplus remaining after satisfaction of all the debts would constitute the estate of the deceased in respect of which the executor can apply for probate. There is no embargo under the provisions of the Succession Act from seeking probate of the Will of an undischarged insolvent.

The Court further observed that the Caveator disputes the very existence of the estate by reason of the insolvency of the deceased as the estate vests in the official assignee, which makes the Caveator a stranger to the probate proceedings. Any person questioning the existence of title in respect of the estate or the capacity of the testator to dispose of the property by a Will would be a stranger to the probate proceedings, inasmuch as such rights cannot be effectively adjudicated upon in probate proceedings.

Lastly, the Court explained that irrespective of the grant being issued or refused, the Caveator's debt is not affected as the debt will be satisfied in the insolvency proceedings. The Probate Court does not venture into the dispute of title and the only question to be answered is whether the Will is validly and legally executed and attested as the last Will and Testament of the deceased. The maintainability of the Petition seeking grant of probate cannot be questioned on the ground that the deceased was an undischarged insolvent, as the Insolvency Act and Succession Act operate in different fields.