

HC once again foils man's attempt to claim SoBo flat

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Mumbai: The Bombay high court has once again thwarted a man's attempt to stake claim to a sprawling 1,200 sqft flat in south Mumbai based on his father's will that is disputed.

Dismissing Satish Shah's appeal, a division bench of chief justice Mohit Shah and justice MS Sonak said: "From the material on record, it does appear that the appellant/plaintiff (Satish) was not candid with the court in the matter of explanation regards the will or the true copy of the will. The explanation belatedly attempted to offer does not inspire confidence."

Shah approached the division bench after justice RD Dhanuka dismissed his appeal in January. According to Shah, his father Chandulal left a will on January 3, 1995. He passed away on Febru-

ary 16, 1996. At stake was a flat and garage in Divyalok building in Malabar Hill in South Mumbai worth more than Rs7 crore.

He claimed the original will was in the office of the Prothonotary & Senior Master of the high court. So, he filed a suit on December 18, 2009, seeking a probate of a certified copy of the will, notarised by advocate IB Sonavane on January 11, 2005. Pending suit, Shah filed notice of motion seeking permission to proceed with the notarised copy of the will as the original will was untraceable.

But on a notice by the court, advocate Sonavane filed an affidavit saying he had not notarised the will. Also, the rubber stamp and his signature on the copy were forged, Sonavane said. But he could not be examined as he passed away in March-April 2012.

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Shah's counsels KC Nichani and BG Saraf argued that the single judge (justice Dhanuka) wrongly dismissed the suit based on the Sonavane's affidavit, especially since they did not get a chance to cross-examine him.

Nichani argued that Shah ought to have been given an opportunity to submit secondary evidence in respect of the original will. This was denied by the single judge.

Shah's brother Vikram opposed it through his counsels Vivek Kantawala,

Bhairavi Waravdekar, Urvi Dalvi and Sneha Nanandkar. Kantawala argued that Shah had neither sought to cross-examine advocate Sonavane nor sought an opportunity to provide secondary evidence.

Also, Shah failed to explain the delay of almost 13 years in instituting probate proceedings. According to Bombay high court rules, satisfactory explanation is necessary where a petition for probate is made for the first time after three years of the death of a testator, Kantawala argued.

The only reason given behind filing a testamentary

suit after 13 years was that "the concerned authority recently asked for probate to clear the title of the property left by the deceased, hence present petition is filed".

But the high court wasn't satisfied. "Any delay beyond three years after the testator's death would arouse suspicion and greater the delay, greater would be the suspicion in regard to the authenticity of the will," the court observed while dismissing the appeal. "The explanation as aforesaid, is far from satisfactory. The explanation is blissfully vague."