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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL No. 210 OF 2014
IN
NOTICE OF MOTION No. 100 OF 2013
IN
TESTAMENTARY PETITION No. 799 OF 2004

Mrs. Chitra Pradeep Chhabra ... Appellant
Vs.
Mrs. Rita Kamaljeet Rajpal ... Respondent

Mr. Atul Damle, Sr. Counsel a/w Ms. Bina H. Jariwala i/b Auroma
Law, for the Appellant.

Dr. Birendra Saraf a/w Shweta Jaydev i/b Federal & Rashmikan, for
the Respondent.

CORAM : V. M. KANADE, &
REVATI MOHITE DERE, JJ.

DATE : FEBRUARY 2, 2015

PC.

1. Heard the learned counsel appearing on behalf of the Appellant. Appellant is aggrieved by an order dated 8.4.2014 passed by the learned Single Judge, in Notice of Motion No. 100 of 2013. By the said order, learned Single Judge was pleased to dismiss the notice of motion, taken out by the Appellant for restoration of the Testamentary Petition No. 799 of 2004, which was dismissed for want of prosecution, on account of non removal of office objection. The Appellant herein had filed the said petition for probate.

2. It appears that matter appeared on board for direction on

17.8.2006 and the learned Single Judge was pleased to grant six weeks time to remove office objection. The learned Single Judge, however, imposed condition that if office objections are not removed within that period, the petition shall stand dismissed without further reference to the Court. The contention of the Appellant that she is not aware of the said order and that the office objection was not removed. Her contention is that she made enquiry with the advocate, who informed that the matter is pending and will be converted into suit, on account of the caveat filed by the Respondent. Learned Single Judge did not accept the contention raised by the Appellant in the motion. It is stated in the impugned order that the delay which was caused in taking out notice of motion for restoration was not properly explained.

3. I have heard the learned counsel appearing on behalf of the Appellant and the learned counsel appearing on behalf of the Respondent. The counsel appearing on behalf of the Respondent has submitted that the learned Single Judge has given cogent reasons for not accepting the plea of the Appellant herein. He submitted that it was duty of the Appellant to find out about the case status and take appropriate steps. He submitted that it was duty of the litigant to act diligently.

4. In our view, the explanation given by the Appellant appears to be plausible. It is a common knowledge that matters which are filed in Courts remain pending for years and decades together and the litigant very often has to rely on the information and advice given by his advocate. Though it is true that litigant has to be diligent and

try to find out what is the case status at time, litigant is helpless since he has to rely on the information given by his advocate. Litigant engaging advocate is almost blind since he has to rely on the information and advice given by his advocate. In such circumstances, therefore, we are of the view that the explanation given by the Appellant was plausible, which ought to have been accepted by the learned Single Judge. Normally, matters are heard and argued on merits and the grounds taken in the restoration application are not seriously disputed. The delay caused in filing the present appeal is condoned. Impugned order, therefore, is set aside and Notice of Motion No. 100 of 2013 is allowed and Testamentary Petition No. 799 of 2004 is restored to the file. The delay caused in filing the caveat is also condoned.

Appeal and Notice of Motion are accordingly disposed of in the aforesaid terms.

[REVATI MOHITE DERE, J.]

[V. M. KANADE, J.]

Vinayak Halemath