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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 81 OF 2015
IN
TESTAMENTARY PETITION NO. 214 OF 2011**

Bhavesh Vasantrai Mehta	...Plaintiff
<i>Versus</i>	
Chandravali Bhuralal Vyas & 2 Ors.	...Defendants

Mr. Bharat Gandhi, i/b K.C. Pandey, for the Plaintiff.

**CORAM: G.S. PATEL, J
DATED: 15th July 2015**

PC:-

1. Heard.

2. The application is to condone a delay of 291 days in filing this Notice of Motion, to set aside an order of dismissal dated 24th June 2013 and, consequently, to restore Notice of Motion 115 of 2013 to file. That order of 24th June 2013 was passed by Mr. Justice R.D. Dhanuka in Notice of Motion No. 115 of 2013; and that Notice of Motion also sought that a delay be condoned and the petition be restored. In other words, the present Notice of Motion is an application for restoration of an application for restoration. It is thus

the second round where the Petitioner seeks to have the Petition restored. The ground given is that the Petitioner has been let down by his Advocates who have not, the Petitioner alleges, been diligent.

3. In fact, the present Notice of Motion is entirely incorrectly framed. Neither the Petitioner nor his present Advocates have cared to take search of the record and proceedings. It appears that the petition was first ordered to be dismissed by an order dated 5th July 2012. However, on 6th July 2012 and 13th July 2012 two caveats were already filed. Therefore, by the time the Petitioner's previous Notice of Motion No. 115 of 2013 was taken up by Mr. Justice R.D. Dhanuka, the Petition was already contested and there was no question of having it been dismissed for default. It ought only to have been directed to have been renumbered as a Suit and listed for framing issues.

4. It appears that even today this Petition is wrongly shown as having been dismissed for default. Since there are two caveats, one by one Mr. Prakash Vyas filed on 6th July 2012 with an accompanying Affidavit in Support of the Caveat and another by one Ms. Taruna Joshi with an accompanying Affidavit in Support dated 13th July 2012, the matter is a contested testamentary proceeding. Possibly, and subject to checking by the Advocate for the Petitioner, there is a third caveat of one Ms. Vasudha Joshi. The matter could not have thus been shown as dismissed for non removal of office objections.

5. Hence, the following order:

- (a) The Registry is directed to immediately show the matter not as having been dismissed for default but as being contested testamentary Petition.
 - (b) Petition to be forthwith renumbered as a Suit.
 - (c) A copy of this order is to be sent by the Advocate for the Petitioners as also by the Registry to the two Caveators who have filed an Affidavit in Support of their Caveats, as also to Mr. Jitendra Damani, learned Advocate who had entered appearance for these two Caveators.
 - (d) On renumbering, list the Suit for framing issues on 27th July 2015.
6. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)