

Sharayu

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 163 OF 2014
IN
TESTAMENTARY PETITION NO. 504 OF 2007**

Mr. Ammenmbal Anant Pye	...Applicant
<i>In the matter between</i>	
Mr. Ammenmbal Anant Pye	...Petitioner
<i>Versus</i>	
Ashok V. Kamath	...Caveator

Mr. Sujit Kurup, *i/b M/s. Kurup Shivaji & Co., for the Petitioner.*
Mr. S.S. Bhandary, *i/b M/s. Bhandary & Bhandary, for the*
Caveator

CORAM: G.S. PATEL, J
DATED: 17th March 2015

PC:-

1. This Notice of Motion seeks condonation of delay in filing the Motion itself, and for a recall of the order dated 22nd July 2013 (Dhanuka, J.). A copy of that order is at page 19 of Affidavit in Support (**Exh.B-1**). By that order, this Petition was restored to file on condition that office objections were removed within six weeks with no possibility of an extension. Mr. Kurup, learned Advocate for the Petitioner, states that he has subsequently found that on the

date of Mr. Justice Dhanuka's order, the office objections had, in fact, already been removed. For some reason, this remained to be communicated to the department, as a result of which the Petition was dismissed.

2. The Motion has been served. Mr. Bhandary appears on behalf of the Respondent to the Motion. He points out that there have been several other Motions and that the Petitioner has been persistently negligent in prosecuting the cause. In any event, Bhandary submits, the Petition no longer survives because the Respondent/Caveator in the present Petition has himself filed Testamentary Petition No. 314 of 2008 for Probate of a Will said to have been left by the deceased, and Probate has been granted in that Petition.

3. Mr. Bhandary is correct in his submission. Once the Probate has been granted, there can be no question of Letters of Administration being granted in respect of the estate of deceased. Mr. Kurup will need to take appropriate steps in regard to the Probate granted. The present Petition is, therefore, not maintainable and Mr. Kurup very fairly concedes this position.

4. In the circumstances, the Notice of Motion is disposed of in the following terms:-

- (a) The delay is condoned;
- (b) It is not necessary to recall the order dated 22nd July 2013. It is clarified that there were no surviving

objections that required compliance as on 22nd July 2013. This is verified by the Associate of this Court from the record itself. Testamentary Petition No. 504 of 2007 is restored to file.

5. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)