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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 34 OF 2016
IN
NOTIE OF MOTION (L) NO. 173 OF 2015
IN
CAVEAT NO. 300 OF 2015
IN
TESTAMENTARY PETITION NO. 525 OF 2015**

Nafisa Abbasbhai Tambawala & Anr.	...Applicants
<i>In the matter between</i>	
Zainuddin Hakimuddin Arzoo	...Petitioner
<i>Versus</i>	
Nafisa Abbasbhai Tambawala & Ors.	...Caveators

Mr. Uzair Kazi, i/b Waquar Ahmed, for the Applicants.
Mr. S.R. Saudagar, for the Petitioner.

CORAM: G.S. PATEL, J
DATED: 11th March 2016

PC:-

1. This Notice of Motion seeks (i) that a delay of 21 days in filing it be condoned; and (ii) that an order dated 8th December 2015 passed by the Prothonotary & Senior Master dismissing

Notice of Motion (L) No. 173 of 2015 for default be recalled and that previous Notice of Motion be restored to file.

2. Notice of Motion (L) No. 173 of 2015 itself sought that a delay in filing a Caveat to oppose the Probate Petition be condoned.

3. The cause given for this series of defaults is that the previous Advocate did not properly attend to the matter. I do not see why the interests of a litigant should be harmed because of the action or inaction of a lawyer.

4. The present Notice of Motion is made absolute in terms of prayer clauses (a) and (b). The order dated 8th December 2015 passed by the Prothonotary & Senior Master is recalled and set aside. Notice of Motion (L) No. 173 of 2015 is restored to file.

5. Office objections in Notice of Motion (L) No. 173 of 2015 to be removed on or before 18th March 2016. It is clarified that if this is not done, Notice of Motion (L) No. 173 of 2015 will stand dismissed for default on that day. It will not thereafter be restored under any circumstances, even on payment of costs, nor will any fresh application for condonation of delay in filing the Caveat be entertained.

6. If the office objections in Notice of Motion (L) No. 173 of 2015 are removed and satisfied by 18th March 2016, that Notice of Motion is to be forthwith finally numbered and **to be listed peremptorily for hearing and final disposal high on the daily board on 22nd March 2016.**

7. In order to ensure that there is no delay, learned Advocate for the Petitioner is directed to keep ready his Affidavit in Reply to Notice of Motion (L) No. 173 of 2015 and to serve a copy of this on the Advocate for the Applicants on or before 21st March 2016. No Affidavit in Rejoinder is to be filed without leave of the Court.

8. All concerned are directed to act on an authenticated copy of this order.

(G. S. PATEL, J.)