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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO.81 OF 2016
IN
TESTAMENTARY SUIT NO.50 OF 2005**

Mrs. Janki Suresh Bhandoola ...Plaintiff
Versus
Mr. Ramesh T. Parsani ...Defendant

Mr.Nishtha Malik , with S. Malik for the Applicant.
Mr. Bijal Mehta, i/b D. Dwarkadas & Partners for Respondent No.1.
Mr. Bapoo M. Malcolm, for the Defendant.
Suresh T. Pasrsani, with Sunil Parsani present.

CORAM: G.S. PATEL, J
DATED: 6th June 2016

PC:-

1. The Chamber Summons seeks restoration of the Suit. It was dismissed by an order 6th December 2007. A copy of that order is at Exhibit "D" at page 15 to the Affidavit in Support of this Chamber Summons. The delay is considerable. The explanation on Affidavit is that the original probate Petitioner Ms. Janki Bhandoola was afflicted by cancer. She is the oldest of six siblings. The only one of siblings to challenge the Will, that of her mother, and of which Ms. Bhandoola sought probate, was one Ramesh Parsani. Ms. Malik for the Applicant points out that there were several medical problems of

the utmost severity in the Petitioner's life, these circumstances making it virtually impossible for her to pursue this matter as she ought to have done. I am inclined to accept these explanations. Certainly the Petitioner seems to have suffered much. Even her own Advocate at that time suffered from cancer and later passed away.

2. It is also to be noted that the other siblings continue to support the Will and the application for probate. One of them, Mr. Ram Parsani, is present in Court. He had filed an Affidavit consenting to the grant of probate. Ms. Malcolm appears for two other brothers who also seek that the probate be granted. It is only one brother who continues to be sole opposing Defendant. I am informed that there are several properties in the estate including some immovable properties and various shares etc. One of these immovable properties is said to have been sold. What needs to be done in relation to those properties, administration and accounts are all matters for a later stage. At this point, the only question is whether the Suit should be restored and, if so, whether this should be on terms, as learned Advocate for the Defendants insists, or not.

3. I am inclined to accept the explanations given by Ms. Malik and her client.

4. The Chamber Summons is made absolute in terms of prayer clause (2). The order dated 6th December 2007 is recalled and set aside. The Testamentary Petition and Testamentary Suit are restored to file forthwith.

5. The Suit is to be listed for framing issues on 20th June 2016.

6. As to the question of costs, having regard to what the Petitioner has already suffered, I am disinclined to add to her suffering. There will be no order as to costs.

(G. S. PATEL, J.)