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

**APPEAL NO.518 OF 2015
IN
CHAMBER SUMMONS NO.41 OF 2015
IN
TESTAMENTARY SUIT NO.82 OF 2014**

Mr. Rusi Burjorji Master and Anr.

... Appellants
(Orig. Respondents)

Versus

Leslie Robert Lamond

... Respondent
(Orig. Applicant)

In the matter of

Osborne Cecil Lamond

... Petitioner
(Since deceased)

Versus

Mr. Rusi Burjorji Master and Anr.

... Respondents

Mr. P.V. Tikare a/w F.A. Rampurawala i/by Z.S. Irani for the Appellants.

**CORAM : A.S. OKA &
G.S. KULKARNI, JJ.**

DATE : 10th MARCH, 2016

PC.

1 Heard the learned counsel appearing for the Appellants. One Osborne Cecil Lamond filed a Petition for grant of Probate. Pending the Petition for grant of Probate, the said original Petitioner expired. Prior to that the Probate petition was already converted into a Testamentary Suit. The impugned order is passed by the learned Single Judge on the Chamber Summons taken out by the Respondents in the

Appeal. The Chamber Summons was taken out for setting aside the abatement and for bringing their names on record. By the impugned order dated 10th April, 2015, the Chamber Summons was made absolute. The learned Judge directed that in addition to permitting the amendments annexed to the Chamber Summons, the Original Petition shall be converted into a Petition for Letters of Administration with Will annexed and the Testamentary Suit will proceed on that basis.

2 The submission of the learned counsel appearing for the Appellants is that the Petition for Probate had already abated and there was no sufficient cause made out for setting aside the abatement. He submitted that the Petition could not have been ordered to be converted into a Petition for grant of Letters of Administration.

3 We have considered the submissions. The Petition was filed by the original Petitioner claiming to be the Executor appointed under the last Will and Testament dated 1st July, 2009 executed by the deceased Testator. We have perused the averments made in the affidavit in support of the Chamber Summons. Chamber Summons was taken out by the Respondents. The first Respondent is claiming to be the brother of the deceased Petitioner/Plaintiff. There are reasons set out in support of the prayer for condonation of delay which are in paragraph 5 to 7 of

the affidavit in support. The delay was of 84 days which the learned Single Judge has condoned as there was a sufficient cause shown. We find no error in the view taken by the learned Single Judge.

4 Obviously, after the death of the original Petitioner who was claiming to be the Executor, the proceedings could not have been continued for grant of Probate at the instance of the Respondents who were not claiming to be the executors and, therefore, the learned Single Judge has directed that the proceedings shall be converted into one for grant of Letters of Administration with Will annexed. We find nothing wrong with the said direction issued by the learned Single Judge in terms of clause 3 of the impugned order. The said direction has been issued to avoid multiplicity of the proceedings. The impugned order causes no prejudice to the Petitioner.

5 Hence, there is no case for interference in Letters Patent Appeal. The Appeal is accordingly dismissed. However, we make it clear that no adjudication is made on merits of the pending Testamentary Suit.

(G.S. KULKARNI, J)

(A.S. OKA, J)