

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

NOTICE OF MOTION NO.126 OF 2016

IN

R.A. NO.833 OF 2015

IN

MISCELLANEOUS APPLICATION (L) NO.3 OF 2014

IN

TESTAMENTARY PETITION NO.589 OF 2013

Ms. Punita Chetan Sheth

...Petitioner /
Applicant.

Mr. Vaibhav Karnik, *for the Petitioner / Applicant.*
Mr. Dushyant S. Pagare, *for Caveator.*

CORAM: G.S. PATEL, J
DATED: 4th July 2016

PC:-

1. This is a Petition for probate. It seems that between the parties there is another contested testamentary action filed in the District Court at Palghar seeking a Succession Certificate. Since both actions relate to the same deceased and estate, and are between the same parties, the present Applicant in Notice of Motion No.126 of 2016 filed a Miscellaneous Application (L) No.3 of 2014 on the Appellate Side under Section 24 of the Code of Civil Procedure

1908 seeking that the Palghar Succession Certificate proceedings be transferred to this court and be heard along with present Testamentary Petition. That Miscellaneous Petition for transfer was correctly filed on the Appellate Side. It seems, however, that the Miscellaneous Application for transfer was dismissed for default or for non-removal of office objections. A restoration application before the Registry also suffered the same fate. Therefore, the present Notice of Motion No.126 of 2016, filed for some strange reason on the Original Side. What the Applicant seeks to do, therefore, by this Notice of Motion is to restore the restoration application in order to restore the transfer application.

2. This is all needlessly complicated. That transfer application must be heard on the Appellate Side. Perhaps, absolutely technically, it is correct that even this application for restoration ought to be made on the Appellate Side. But this will only delay both matters unnecessarily. I propose in this order today, to allow the applications for restoration of miscellaneous transfer application.

3. The Miscellaneous Transfer Application (L) No.3 of 2014 is restored to file. All delays are condoned.

4. List the Miscellaneous Transfer Application before the appropriate bench on the Appellate Side.

5. Liberty to mention after the order is obtained.

6. Notice of Motion No.126 of 2016 and the Restoration Application No.833 of 2015 are both disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)