

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO.79 OF 2015
IN
TESTAMENTARY PETITION NO.946 OF 2012**

Mrs. Nirmal Kulbhushan Kapur & Ors.	... Petitioners
<i>Versus</i>	
Mr. Sharwan Vishwanath Kapur & Ors.	...Caveators

Mr. Rajiv Singh, with J. Dutt i/b Chitnis & Co. for the Petitioners.
Mr. B. Poojari, i/b. Asian Patent Law for Caveator.

CORAM: G.S. PATEL, J
DATED: 24th June 2016

PC:-

1. Heard.

2. This is a Motion for condonation of delay in filing the Affidavit in Support of a Caveat. The Caveat in question is filed by one Mr. Amar Vishwanath Kapur. The Affidavit in Support of the Notice of Motion indicates that the non-filing of the Affidavit in Support of the Caveat was due to oversight and inadvertence on the part of Caveator's Advocate. The Caveator himself could not be expected to know better. It is well-settled that the omission or default of an advocate should not prejudice a party.

3. The Motion is allowed. It is made absolute in terms of prayer clauses (a), (b) and (c). The Affidavit in Support of the Caveat is already lodged. In consequence, the Testamentary Petition is to be renumbered as a Suit.

4. Mr. Singh for the Petitioner presses for costs. He does so on the basis that the delay is over a year. He is undoubtedly entitled to make this application. Since today is 24th June, he will be entitled to Rs.246/- in costs. Mr. Poojari agrees to pay these costs by cheque within one week from today.

(G. S. PATEL, J.)