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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 193 OF 2016
IN
CHAMBER SUMMONS (L) NO. 78 OF 2014
IN
TESTAMENTARY PETITION NO. 1223 OF 2013**

Vasu Kuddu Devadiga	...Petitioner
<i>Versus</i>	
Shekhar Kuddu Devadiga	...Caveator

Mr. Uday P. Warunjikar, *with Mr. Siddhesh Pilankar, for the
Caveator/Applicant.*
Ms. Priscilla Samuel, *for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 5th October 2016

PC:-

1. This is the Caveator's application for recall of an order dated 5th November 2014 passed by the Prothonotary & Senior Master in Chamber Summons (L) No. 78 of 2014. That Chamber Summons was dismissed. The Chamber Summons itself sought condonation of a delay of 95 days in filing the Caveat and Affidavit in Support. There is yet another delay of 602 days in filing the Notice of

Motion. In other words, there has been a delay at every one of the three stages in the matter so far.

2. I am aware that allowing this application will undoubtedly cause some prejudice to the Petitioner who is 65 years old and is a shopkeeper. At the same time, I do not think it would be fair to deny the Applicant/Caveator an opportunity to place his case before the Court. This must be on some terms and these terms must be specified having regard to the relative position of the parties and their status in life. The Applicant is working as a driver or chauffeur with a company. On record before me, I do not, of course, have any financial documents so I can only guess their financial positions.

3. As to the reasons for the delay, these are set out in the Affidavit in Support of the present Notice of Motion and particularly in paragraph 4A at page 5. I will accept these although the name of the Advocate is not mentioned, simply because this is, in my experience, a not infrequent situation. The law is well settled that the default of an Advocate should not result in visiting of adverse consequence on the litigant himself.

4. I will allow the Notice of Motion in terms of prayer clauses (a) and (bb) condoning the delay, setting aside the order dated 5th November 2014 passed by the Prothonotary & Senior Master and restoring Chamber Summons (L) No. 78 of 2014. Chamber Summons (L) No. 78 of 2014 is restored to file. This is, however, subject to a condition of payment of costs quantified at Rs. 2,500/- by the Applicant to the Petitioner.

5. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)