

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

***NOTICE OF MOTION NO.50 OF 2017
in
TESTAMENTARY PETITION NO.1345 OF 2013
WITH
TESTAMENTARY PETITION NO.1345 OF 2013***

Ghanshyamdas Hemdev	..	Deceased
Deepak Hemdev	..	Applicant/Petitioner

Mr.Manoj Agre i/by Ms.Divya Sanghvi for the applicant/petitioner.

***CORAM : R.D. DHANUKA, J.
DATE : 20th June 2017***

P.C. :

. By this notice of motion, the applicant seeks condonation of delay of 585 days in filing the notice of motion and for recall of the conditional order passed by this Court on 5th May 2015 dismissing the Testamentary Petition for non-compliance under Rule 435 of the Bombay High Court (Original Side) Rules, 1980.

2. Learned counsel appearing for the applicant invited my attention to the averments made in the affidavit in support of the notice of motion and also the annexures. He submits that all office objections were already removed except three objections, out of which one is about service of citation on the two legal heirs of the deceased where they have not given their consent as they were staying at Dubai. He submits that as per the track report from the Indian Post, the two packets containing duplicate citation were already delivered to the addressee on

10th February 2014 itself i.e. before passing of the conditional order dated 5th May 2015 by Shri Justice G.S. Patel. The applicant, however, did not have proof of service of citation. The applicant was pursuing with the matter in the office of Sheriff of Mumbai and came to know that the service of citation was completed much before the conditional order passed by this Court. He submits that all the office objections are already removed. Statement is accepted.

3. I have heard the learned counsel for the applicant and have perused the affidavit-in-support of the notice of motion. In my view, the applicant has made out a case for condonation of delay and for recall of the order passed by this Court on 5th May 2015. Delay is also sufficiently explained.

4. I therefore pass the following order :-

- i) Notice of motion is made absolute in terms of prayer clauses (a) and (b). No order as to costs.
- ii) The applicant is permitted to file affidavit of service of citation in the office of the Prothonotary and Senior Master within two weeks from today.
- iii) Place the Testamentary petition on board for 'Directions' on 28th June 2017.

R.D. DHANUKA, J.