

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

TESTAMENTARY PETITION NO.994 OF 2014

**WITH
NOTICE OF MOTION NO.11 OF 2017**

Shri Ramesh Babubhai Kapadia & Ors.Petitioner/applicant

And

Saroj Babubhai KapadiaDeceased

Mr.Mehul A.Shah for the petitioner/applicant.

CORAM : K.R.SHRIRAM,J

DATE : 16.1.2017

P.C.:-

1 The petitioner is seeking condonation of delay and restoration of petition which came to be dismissed by a self operative order dated 2.5.2016. The counsel for the petitioner states that once the petition is restored, leave be granted to the petitioner to withdraw the petition since the petitioner will be filing petition under Section 228 of the Indian Succession Act 1925 with respect to the same estate. The counsel also submits that in view of the provisions of section 23 of the Maharashtra Court Fees Act, the court can grant adjustment of court fees paid in this petition against the petition to be filed by the petitioner no.1 since the estate is the same.

2 Considered the affidavit in support. For reasons mentioned therein, the delay is condoned. Petition is restored to file

and disposed as withdrawn.

3 The petitioner also is granted leave to adjust the court fees paid in this petition against the petition to be filed by petitioner no.1 under section 228 of the Indian Succession Act 1925.

4 Registry while checking about the court fees when new petition to be filed, to be satisfied that the estate relates to the same as in the petition which is disposed as withdrawn and the new petition that is to be filed by the petitioner no.1.

5 Notice of Motion disposed accordingly. Petition also disposed as withdrawn.

(K.R.SHRIRAM,J)