

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

**NOTICE OF MOTION NO. 128 OF 2017
IN
CAVEAT (L) NO. 48 OF 2015
IN
TESTAMENTARY PETITION NO. 247 OF 2014**

Bharat Venilal Kanakia & Anr.

...Applicants/Petitioners

Vs.

Kartik Venilal Kanakia

...Caveator

Mr.Zain Mookhi with Ms.Anchal Singh I/b. Mansukhlal Hiralal & Co. for
Applicants/Petitioners.

Ms.Rohini Dandekar for Caveator.

CORAM : S.C. GUPTE, J.

DATE : 31 OCTOBER 2017

P.C. :

Heard learned Counsel for the parties.

2 The notice of motion seeks recall of a dismissal order for want of prosecution. There is a substantial delay in taking out the present application. Considering, however, the grounds raised in the affidavit in support of the notice of motion and the overall considerations of justice and fair play, this court is of the view that the delay may be condoned and the order of dismissal can be recalled subject to payment of costs. Accordingly, the notice of motion is allowed by condoning the delay and recalling the order of dismissal and restoring the petition on file subject to payment of costs of Rs.25,000/- by the Petitioners in one set to the Respondent.

(S.C. GUPTE, J.)