

**NOTICE OF MOTION NO.115 OF 2017
IN
CHAMBER SUMMONS (L) NO.118 OF 2013
IN
TESTAMENTARY PETITION NO.308 OF 2012**

2 The present Notice of Motion seeks recall of an order passed by the
Prothonotary and Senior Master on Chamber Summons (L) No.118 of
2013. The Chamber Summons was for condonation of delay in filing an
affidavit in support of the caveat filed by the Applicant. It appears that by

self operative order dated 7 April 2014, passed by the Prothonotary and Senior Master, the Applicant was directed to remove office objections on the chamber summons and have the same numbered and registered on or before 21 April 2014, failing which, the chamber summons was to stand rejected under Rule 986 of Bombay High Court Original Side Rules. Office objections were not removed by stipulated date and the chamber summons stood rejected. The present Notice of Motion is taken out in May 2017. The delay of over three years is sought to be explained by submitting that the earlier advocate of the Applicants could not communicate the rejection order to the Applicant and that when the present advocate of the Applicant ascertained online status of the matter, the order of rejection was noticed. Even if it is granted that the earlier advocate of the Applicant did not communicate the rejection order to the Applicants, it is still difficult to accept that the Applicants never made any inquiry over the next three years or so and only noticed the rejection order after ascertaining the status of the matter online as submitted in the affidavit. Considering, however, the overall interests of justice, this delay may be condoned and the chamber summons may be restored after recall of the original rejection order, subject to payment of reasonable costs by the Applicants to the Respondents (original Petitioners). Accordingly, Notice of Motion is made absolute in terms of prayers (a) to (c). The Chamber Summons is restored to file. The Applicants shall pay costs of this Chamber Summons estimated at Rs.15,000/- (Rs. Fifteen Thousand Only) to the Respondents (original Petitioners). Costs to be condition precedent.

(S.C. GUPTE, J.)