

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**NOTICE OF MOTION NO. 190 OF 2017**

**IN**

**TESTAMENTARY PETITION NO. 1022 OF 2013**

|                                      |   |             |
|--------------------------------------|---|-------------|
| Vijay alias Bijai Bihari Gupta       | ] | Deceased    |
| Smt. Umrai Rajaram Gupta [deceased]  | ] |             |
| Munnalal Rajaram Gupta & Anr.        | ] | Petitioners |
| .....                                |   |             |
| Mr. Sanjay T. Manek, for applicants. |   |             |

.....  
**CORAM : R.G. KETKAR, J.**

**DATE : 15TH SEPTEMBER, 2017.**

**P.C.:**

Heard Mr. Manek, learned Counsel for applicants.

2. This Motion is taken out for following reliefs:
  - [a] Delay of 781 days, may be condoned.
  - [b] that in the interest of justice the above said Petition be restored to file by setting aside order dated 5<sup>th</sup> May, 2017.
  - [c] Witness Summons be issued to Advocate K.B. Bhambhid directing him to sign Draft Affidavit annexed to Affidavit in Support of the Petitioner, as attesting witness to the Will of the deceased, to enable the Petitioner to remove office objections

in the above Petition.

3. Mr. Manek submitted that by order dated 5<sup>th</sup> May, 2015, applicant/petitioner was directed to remove office objection in Testamentary Petition No. 1022 of 2013 on or before 29<sup>th</sup> June, 2015 failing which, Petition to stand dismissed for non compliance under Rule 435 of the High Court Original Side Rules, without further reference of the Court. He further submitted that only office objection was that affidavits of attesting witness to the Will of the deceased were not filed. He submitted that as attesting witnesses are not available, he will take out appropriate proceedings in that regard after restoration of the Petition.

4. In view thereof and for the reasons set out in the affidavit in support, Notice of Motion is made absolute in terms of prayer clauses (a) and (b). Liberty is reserved to the applicant to take out proceeding in relation to prayer clause ( c).

**[R.G. KETKAR, J.]**