

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 108 OF 2018

IN

TESTAMENTARY PETITION NO. 354 OF 1987

Sushilkumar Kesharinath Sawe

Applicant/Petitioner

Mr. Atharva Dandekar I/b Mr. Abhijeet Marathe for
Applicant/Petitioner.

CORAM : A.K. MENON, J.

DATED : 22ND APRIL, 2019

P.C. :

1. This Notice of Motion seeks condonation of delay of 58 days and setting aside the order dated 28.09.2017 read with original order dated 22.12.2017 dismissing the Petition.

2. On behalf of the applicant it is submitted that the delay had occurred due to the fact that the earlier advocate on record has not informed the progress in the matter, if any. From paragraph 2 in Affidavit-in-Support, it appears that after filing the Petition in the year 1987, the petitioner had filed a Notice of Motion for interim reliefs.

3. The record however does not indicate whatever any Notice of Motion had been filed. The Affidavit further states that a few orders were passed therein in the year 1996. This submission is also not supported the record before me. On the contrary, the original petition

seems to be disposed of by the Prothonotary and Senior Master on 22nd June 1994 under Rule 435 of the High Court Original Side Rules. This Petition does not appear to be restored thereafter.

4. In view of the above, the contentions in the Affidavit-in-Support of the Notice of Motion do not appear to be correct. Learned counsel for the petitioner seeks leave to withdraw the motion and with liberty to file a fresh motion, if so advised.

5. Notice of Motion is allowed to be withdrawn with liberty as aforesaid.

(A.K. MENON,J.)