

JPP

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

NOTICE OF MOTION (Lodg.) NO. 1085 OF 2018

in

APPEAL (Lodg.) NO. 464 OF 2018

in

MISCELLANEOUS PETITION NO. 63 OF 2010

in

TESTAMENTARY PETITION NO. 566 OF 2008

Arzan Khambatta

... Applicant/Appellant.

V/s.

Martin Borchert & Ors.

... Respondents.

Ms. Shamima Taly, Mr. Aziz Shaikh, Mr. Vithoba Masurkar I/b. Mahomedbhai & Co. for the Applicant/Appellant.

Ms. Vandana Mehta a/w. R. Fernandes I/b. Siddhesh Bhole for the Respondents.

***CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.***

DATE : 01 FEBRUARY, 2019.

P.C. :-

This Notice of Motion is taken out for condonation of delay of 152 days in filing the Appeal.

2. We have heard the learned Counsel for the parties. In the affidavit in support of the Notice of Motion, the reason for the delay is given. It is stated that the Applicant was under the bonafide belief that his co-executor would give the instructions to the Advocates for filing an Appeal. It is stated that the co-executor was thereafter not keeping well. The Applicant has stated that the Applicant is an artist and sculptor and is engaged in various social work. He has stated that due to certain misunderstandings, he had to change his Advocates. These statements which have been made on oath have gone uncontested as the Respondents have chosen not to file any reply despite the Notice of Motion being filed on 11 October 2018.

3. The learned Counsel for the Respondents contended that the Appeal itself should not have been filed as the Appellants have accepted the order, which is evident from their correspondence. This is, however, an argument on the merits of the Appeal. The uncontroverted statements made on oath by the Applicant constitute sufficient cause for condoning the delay.

4. In the circumstances, the Notice of Motion is allowed in terms of prayer clause (a).

N.M. JAMDAR, J.

CHIEF JUSTICE