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

NOTICE OF MOTION NO.6 OF 2020

IN

TESTAMENTARY PETITION NO.735 OF 2006

Mr. Karsan Popatlal Shah

... Deceased

Jayashri Vinod Chheda

**...Applicant /
Petitioner.**

Mr. Waquar Ahmed for the Applicant / Petitioner.

**CORAM : R.I. CHAGLA J.
DATE : 20 October 2021**

ORDER :

1. Heard learned Advocate for the Applicant /
Petitioner.

2. By this Notice of Motion the Applicant is seeking
condonation of delay of 3569 days in filing present Notice of
Motion. A further relief has been sought for restoration of the
Testamentary Petition which had been dismissed by an order
dated 12th December, 2008.

3. It is stated in the Affidavit in Support of the Notice
of Motion that the Testamentary Petition had appeared on the

board of this Court on 12th December, 2008 and due to inadvertence of the Petitioner the Petition stood dismissed as Petitioner failed to remove the office objections within the six weeks granted. In paragraph 7 of the Affidavit in Support of the Notice of Motion, it is stated that the order dated 12th December, 2008 is not applicable to them as they had removed some part of the office objections. Therefore, there was compliance of first notice and the Advocate attempted to remove the further office objections.

4. This Court by an order dated 12th October, 2021 considering the enormous delay of 3569 days for filing the Notice of Motion had considered the reasons given for the delay to be unsatisfactory and accordingly the learned Advocate for the Applicant sought leave to file further Affidavit in Support to the Notice of Motion to explain the delay and the fact that the present Advocate come on record only in 2018. Accordingly, the Applicant was allowed to file further Affidavit in Support of the Notice of Motion.

5. Further Affidavit in Support to the Notice of Motion has been filed on 12th October, 2021. It is only mentioned in the

said Affidavit that the delay in filing the Notice of Motion is because the Applicant was housewife and was unable to give necessary instructions to the Advocate for filing the Notice of Motion. It has been further mentioned that she could not contract the Advocate for removal of office objections.

6. The reasons given in the Affidavit in Support of the Notice of Motion as well as the reasons given in the further Affidavit in Support dated 12th October, 2021 are entirely unsatisfactory. By the order dated 12th October, 2021, this Court had inspite of finding that no justification for the delay in filing the Notice of Motion had been given, provided an opportunity to the Advocate for the Applicant to file a further Affidavit in Support to the Notice of Motion to explain the delay. However, there is no any attempt to justify the exorbitant delay of 3569 days in filing the Notice of Motion. Further, there is no mention as to when the new Advocates came on record as the Notice of Motion has been filed only on 13th April, 2018.

7. Thus, there is no merit in the Notice of Motion and hence the Notice of Motion is dismissed.

[R.I. CHAGLA J.]