

NOTICE OF MOTION NO. 125 OF 2019  
IN  
TESTAMENTARY PETITION NO. 1446 OF 2011

Faquirchand Gulfamal Mehra  
alias F.C. Mehra ... Deceased

Umesh Faquirchand Mehra & Ors. ... Applicants/Petitioners

Mr. Aswin Shete a/w Abhay Dhadiwal & Anushka Agarwal i/b Jayakar & Partners for the Applicants/Petitioners.

**DATED : 14<sup>th</sup> OCTOBER, 2021.**

**P.C. :**

1           Heard the learned Counsel for the Applicants.

2 By this Notice of Motion the Applicants are seeking  
condonation of delay of 1673 days in filing the Notice of Motion. The  
Applicant is further seeking to set aside the order dated 01.10.2014  
passed by the then Justice Smt. Roshan Dalvi and for restoration of the  
matter to file. The Applicants are seeking time of 12 weeks to remove  
further office objections and comply with the requisitions from the date

when such objections and requisitions are raised by the Prothonotary and Senior Master, High Court, Bombay.

3           The learned Counsel for the Applicants state that there is a checkered history between the Applicants and Mr. Parvesh Mehra, sons of the deceased late Faquirchand Gulfamal Mehra. In certain proceedings between the Applicants and one Mr. Parvesh Mehra, which went to the Supreme Court an order came to be passed by the Supreme Court on 25.11.2011 by which the parties were directed to appear before Mr. Justice B.N. Srikrishna, (Retired) as the Supreme Court felt that the matter required to be settled through mediation. Thereafter, the Applicants and Mr. Parvesh Mehra entered into a Family Settlement Deed which recorded the understanding between the parties in relation to the mode and manner of distribution of assets belonging to various firms as well as the estate of the deceased. The mediation proceedings were agreed to be converted into arbitration and the Family Settlement Deed was referred to the Sole Arbitrator Justice B.N. Srikrishna, (Retired). Thereafter, several meetings were held before the Sole Arbitrator who by interim awards dated 08.06.2015 and 14.08.2015 fixed the valuation of various properties for the purpose of their disposal and the two interim awards remain unchallenged till date.

4           As per the valuation done by the sole arbitrator, the parties to the proceedings were to receive the amounts mentioned in paragraph 3.8 of the Affidavit in support of the Notice of Motion as per their respective shares in the assets of the said deceased and firms as agreed upon in the family settlement. Consequently, upon the directions of the Sole Arbitrator total sum due to Parvesh Mehra was deposited with Sole Arbitrator and who released amounts from time to time. This has been acknowledged by Mr. Parvesh Mehra. Various documents were thereafter executed. Power of attorney were also executed by Mr. Parvesh Mehra in favour of the Applicant No.1 so that transfer of properties would take place in his absence. Since there was a default committed by Mr. Parvesh Mehra in admitting execution and making unsubstantiated allegations, the Sole Arbitrator passed order dated 25.11.2016 expressing his desire to be withdraw from the arbitration. Thereafter, the matter was heard before the Supreme Court when the parties filed their respective pleadings. The Supreme Court by order dated 06.10.2017 directed payment of monies by the Applicants to Mr. Parvesh Mehra who shall execute the documents.

5           Thereafter, in the proceedings between Mr. Parvesh Mehra and the Applicants, an order came to be passed by the Supreme Court on 25.09.2018 wherein the Supreme Court had inter-alia directed an

affidavit to be filed in the Petition for letters of Administration No.1446 of 2011 in this Court. In compliance with the said order of the Supreme Court dated 25.09.2018, a consent affidavit was filed by Mr. Parvesh Mehra in the Testamentary Petition No.1446 of 2011 which is the Petition for which restoration has been sought by the Applicants. This has been recorded in the order dated 08.04.2019 passed in another Testamentary Petition No.755 of 2010 which has been recorded that in view of the consent affidavit having been filed in Testamentary Petition No.1446 of 2011, the Petitioner does not wish to prosecute this Petition. The Petition was accordingly allowed to be withdrawn.

6           The learned Counsel for the Applicants has stated that in view of the multiple proceeding between Mr. Parvesh Mehra and the Applicants, the Applicants lost sight of the fact that by a common order dated 01.10.2014 various Testamentary Petitions including the Testamentary Petition No.1446 of 2011 filed by the Applicants had been dismissed for non removal of office objection. The Applicant No.1 has stated in paragraph 7 of the affidavit in support of the Notice of Motion that the Testamentary Petition which had been filed on 05.08.2010 was the subject matter of certain office objections and which were removed by the Advocates of the Applicants/Petitioners and consequently the Petition had a final number on 20.12.2011. However, despite getting the final

number certain other obligations were required to be fulfilled by the Applicants. It is stated that due to the multiple proceedings in various forums, the Applicants could not pay attention to the captioned matter and inadvertently, the office objections could not be complied with. It is thereafter stated in paragraph 9 of the Affidavit in support that the common order dated 01.10.2014 passed by Hon'ble Justice Mrs. Roshan Dalvi, was noticed only upon going on the High Court official website to check whether Mr. Parvesh Mehra in compliance with the said order of the Supreme Court dated 25.09.2018 had filed the affidavit in the above Testamentary Petition, the Applicants realised that the Testamentary Petition had been dismissed. Accordingly, it is stated that there is delay of four years five months in filing the present Notice of Motion. It is further stated in paragraph 10 that there are very few office objections and which shall be removed within the time stipulated by this Court. Accordingly, the relief has been sought for in the Notice of Motion.

7            Having considered the submissions, it is noted that there have been multiple proceedings between the Applicants and Mr. Parvesh Mehra who are brothers. In view of these proceedings which ultimately went to the Supreme Court, the Applicants appear to have lost sight of the fact that by the common order dated 01.10.2014 passed by the then Justice Mrs. Roshan Dalvi, Testamentary Petition No.1446 of 2011 had

been dismissed for non-removal of office objections.

8           Considering the averments in the affidavit in support of the Notice of Motion and particularly the orders passed by this Court as well as the Supreme Court, in particularly the order dated 25.09.2018 passed by the Supreme Court where Mr. Parvesh Mehra was directed to file affidavit in the above Testamentary Petition No.1446 of 2011 in this Court, it does appear that the parties had lost sight of the common order dated 08.04.2019. Thus, the reasons given in the affidavit in support of the Notice of Motion for the delay in taking out the Notice of Motion for restoration of Testamentary Petition No.1446 of 2011 as well as for condonation of delay of four years and five months appears to have substance.

9           The Testamentary Petition No.1446 of 2011 is required to be restored to file by condoning the delay in taken out the Notice of Motion. Hence the following order is passed :

- i)     The delay of 1673 days in filing the present Notice of Motion is condoned.
- ii)    The order dated 01.10.2014 passed by the then Hon'ble Justice Mrs. Roshan Dalvi insofar as pertains to

Testamentary Petition No.1446 of 2011, is recalled.

iii) The Testamentary Petition No.1446 of 2011 is restored to file.

iv) The Petitioners in Testamentary Petition No.1446 of 2011 shall remove the office objections and comply with the requisitions raised by the Prothonotary and Senior Master within a period of four weeks from the date of uploading of this order.

v) Notice of Motion is disposed of in the above terms.  
There shall be no orders as to costs.

Digitally signed  
by WAISHALI  
SUSHIL  
WAGHMARE  
Date:  
2021.10.26  
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+0530

WAISHALI  
SUSHIL  
WAGHMARE

(R.I. CHAGLA, J.)