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

INTERIM APPLICATION NO.588 NO 2021
IN
TESTAMENTARY PETITION NO.2098 OF 2015

Rajkumar Lachhmandas Chhabria ...Applicant /
Petitioner

Versus

Lachhmandas Pinjomal Chahabria ...Deceased

Mr. Sumett Bansod i/b. L.J. Law 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 Interim Application, the Applicant is
seeking restoration of the Testamentary Petition No.2098 of
2015 by setting aside order dated 18th February, 2019. The
Applicant is also seeking condonation of delay of 651 days in

filing this Interim Application. The learned Advocate for the Applicant has referred to an order dated 22nd January, 2019 passed by this Court in Notice of Motion No.79 of 2018 taken out in the above Testamentary Petition, wherein this Court had considered that the Notice of Motion had been taken out for condonation of delay of 385 days in filing the Notice of Motion and for recalling the common order dated 9th January, 2017 passed by this Court dismissing the various Petitions, as well as the above Testamentary Petition. This Court had found the reasons recorded in the Affidavit in Support of the Notice of Motion to be satisfactory and by condoning the delay had made Notice of Motion absolute in terms of prayer clause (a) on condition that if the Applicant failed to remove office objections within four weeks from the date of order, the Testamentary Petition shall stand dismissed without further reference to the Court.

3. Thereafter, by order dated 18th February, 2019, this Court had dismissed the Testamentary Petition without further reference to Court. In view thereof, Interim Application No.588 of 2021 had been taken out.

4. The learned Advocate appearing for the Applicant has referred to paragraph 7 of the Interim Application wherein it is stated that it is only on 3rd December, 2020 the Applicant upon enquiry came to know that the erstwhile Advocate did not comply with the office objections of this Court and moved abroad. Accordingly, there was a delay of 629 days in filing the above Interim Application and that the delay was not due to negligence on the part of the Applicant and for circumstances beyond the control of the Applicant.

5. I have perused the averments made in the Affidavit in Support of the Interim Application. It does appear from the paragraph 7 of the Interim Application that it was due to negligence of the Applicant's Advocate that the office objections were not removed and thereafter the Advocate had moved abroad and not informed the Applicant of the order dated 18th February, 2019 by which the Testamentary Petition stood dismissed without further reference to Court. Considering that the dismissal of the Testamentary Petition was on the fault of the erstwhile Advocate, the Applicant should not be made to suffer. Hence the following order:-

(i) The delay of 651 days in filing the Interim Application is condoned.

(ii) The Testamentary Petition No. 2098 of 2015 is restored to file.

(iii) The order dated 18th February, 2019 is recalled.

(iv) The Interim Application is disposed of in the above terms.

[R.I. CHAGLA J.]