

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

**INTERIM APPLICATION NO. 1792 OF 2021
IN
TESTAMENTARY SUIT NO. 209 OF 2017
IN
TESTAMENTARY PETITION NO. 2286 OF 2016**

Chetan Govind Dabholkar & Anr. ... Applicants

In the matter between
Govind Gajanan Dabholkar ... Plaintiff

Versus

Umabai Vasant Samant & Ors. ... Defendants

Mr. R.M. Nakhawa i/b Mr. Vasant Dhawan for the Applicants.

CORAM : R.I. CHAGLA, J.
DATED : 28th OCTOBER, 2021.

P.C. :

1 Heard the learned Counsel for the Applicant.

2 By this Interim Application, the Applicant is seeking condonation of delay in taking out the Interim Application. Further relief has been sought for amendment of the Petition as per the schedule at page 11 of the Interim Application and other consequential amendments.

3 It is stated that the Original Petitioner who had filed the Testamentary Petition No.2286 of 2016 had expired on 07.04.2021. The Testamentary Petition had been converted to Testamentary Suit No.209 of 2017 during the lifetime of the Original Petitioner who was the Executor and legatee named under the Will.

4 The Applicants are the legal representatives of the Original Petitioner, being the son and married daughter of the Original Petitioner. The Applicants in that capacity are entitled to continue the testamentary proceedings and accordingly, the Interim Application is taken out for necessary amendment to substitute the Applicants as Petitioners in the Testamentary Petition.

5 The delay in filing the Interim Application has been explained in paragraph 7 of the Interim Application viz. that the Applicant due to the covid pandemic situation in Mumbai, could not contact their Advocate and give instructions for taking out the Interim Application. Hence, the delay.

6 The learned Counsel for the Applicants has submitted that in view of the Executor having expired before administering the Estate of the deceased, the legal representatives of the Executor may be granted the letters of administration with Will of the whole Estate of the deceased or

so much thereof as may be un-administered. He has relied upon Section 232 of the Indian Succession Act. He further relies upon the decision of this Court in *Vatsala Shrinivasan vs. Narsinha Raghunathan*,¹ to that effect. He has submitted that the said decision also holds that in the event of the death of the Executor/legatee, upon an Application for amendment of the Petition for bringing the legal representatives of the Executor/ legatee on record, instead of probate, the legal representatives may be granted letters of administration. He has accordingly submitted that the Interim Application be allowed.

7 Having considered the submission of the learned Counsel for the Applicants, the averments in the Interim Application and the decision of this Court in *Vatsala Srinivasan* (supra) read with the Section 232 of the Indian Succession Act, 1925, I am of the view that a case has been made out for the grant of relief sought for in the Interim Application.

8 I have also considered the affidavit-in-reply of the Defendants which has apart from stating that sufficient cause has not been shown for allowing the Interim Application and the schedule of the amendment is not proper, without any justification being given, there are nothing but bare denials.

¹ 2011 (3) Bom.C.R.78

9 The Defendants have been served with the Interim Application and the names of the Advocates are also appearing on the board, inspite of which they have remained absent.

10 Hence, the following order :

- i) The delay in carrying out the Interim Application is condoned.
- ii) The Applicant is permitted to amend the Testamentary Petition as per the schedule at page 11 of the Interim Application.
- iii) Consequential amendments are also allowed including converting the probate Petition into the Petition for letters of administration with Will annexed as per High Court (Original Side) Rules, 1988.
- iv) Amendment shall be carried out within a period of four weeks from the date of this order.
- v) Interim Application is disposed of. There shall be no order as to costs.

(R.I. CHAGLA, J.)