

Sharayu Khot.

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

INTERIM APPLICATION NO. 1032 OF 2022

IN

TESTAMENTARY PETITION NO. 207 of 2010

Naval Gopikishan Rugta

...Applicant

In the matter between

Gopikishan Kishanlal Rungta

...Deceased

Versus

Naval Gopikishan Rugta & Ors.

...Petitioners

Ms. Dolly Kotwani i/by Vinayak Kumbhar for the Applicant.

CORAM : R.I. CHAGLA J

DATE : 26 August 2022

ORDER :

1. Heard the learned Counsel for the Applicant/original
Petitioner.

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2. By this Interim Application, the Applicant is seeking
recall of conditional order dated 5th July 2012 passed by this Court
in Testamentary Petition No. 207 of 2010 and for restoration of the

Testamentary Petition No. 207 of 2010 which came to be rejected for non removal of office objections by the said conditional order.

3. The Applicant had filed the Petition for Letters of Administration to the properties and credits of the deceased Gopikishan Kishanlal Rungta. The Applicant has stated that due to certain issues none of the Petitioners could pursue the Petition and were unaware about the dismissal of the Petition. The Applicant had contacted his advocate, but the Applicant was informed that the advocate had permanently shifted to Canada in the year 2015 and was no longer practicing in this Court.

4. The Applicant has stated that in the month of December, 2020, the Petitioners checked the status of the matter on the website of the Court, when they came to know about dismissal of the Petition. The Applicant has stated that due to lack of knowledge of dismissal of the Petition, the Petitioners could not take immediate steps to restore the Petition. Upon receiving legal opinion, the Applicant instructed his advocate to prepare the present Interim Application. There was delay due to the advocate representing the Applicant having permanently shifted to Canada and by virtue of which

documents could not be obtained in time. Accordingly, the present Interim Application has been taken out.

5. I have perused the Interim Application and noted the fact that the conditional order was passed way back on 5th July 2012 in batch of Testamentary Petitions by which the Petitioners were given one last opportunity to remove the office objections, failing which the Petition shall stand dismissed without further reference to the Court. Upon non-removal of office objections, the Testamentary Petition came to be dismissed. The present Interim Application has only been filed on 11th February 2022.

6. The only explanation given is that the advocate had permanently shifted to Canada in the year 2015 and is no longer practicing in this Court, The Applicant has stated that the Petitioners came to know of the rejection of Testamentary Petition in the month of December 2020, upon checking of the status of the matter on the website of this Court. However, considering that the Petition is for Letters of Administration of the properties and credits of the deceased, the Petitioners should not be made to suffer in view of his advocate's default in pursuing the matter. Thus, a liberal view has

been taken.

7. However, considering the gross delay in filing the Interim Application, the Testamentary Petition is being restored, subject to payment of costs. Hence the following order :-

- (i) Testamentary Petition No. 207 of 2010 is restored to file by recall of the conditional order dated 5th July 2012 insofar as it applies to the present Testamentary Petition.
- (ii) This would be subject to payment of costs of Rs. 10,000/- (Rupees Ten Thousand only) to be paid by the Petitioners in favour of Deeds for Needs Foundation, Row No. C/4, Clover Highlands, Kondhwa, SN. 25/1 To 4, NIBM Road, Pune – 411048.
- (iii) Petitioners are granted six weeks time to remove office objections, which have been raised by the Testamentary Registrar, failing which the Testamentary Petition shall stand rejected without further reference

to the Court.

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

[R.I. CHAGLA J.]