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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO.2461 OF 2021
IN
TESTAMENTARY PETITION NO.473 OF 2013

Suryakant Chandrakant Mishra ...Petitioner

Versus

Mr. Chandrakant Rameshwarprasad Mishra ...Deceased

Mr. Abhijeet Barve for the Applicant / Plaintiff.

CORAM : R.I. CHAGLA J.
DATE : 28TH SEPTEMBER, 2022.

ORDER :

1. Heard learned Counsel for parties.
2. By the present Interim Application, the Applicant is seeking condonation of delay of 1770 days in filing the present Interim Application for the recall of the conditional order dated 5th May, 2015 by which the Testamentary Petition was rejected for non-compliance of office objections under Rule 435 of the High Court Original Side Rules. Further, relief is sought for restoration of the Testamentary Petition.
3. The Applicant / Petitioner has stated that the office

objections had been raised in the Testamentary Petition filed for probate of the last Will and Testament of the deceased who is the father of the Petitioner. The Applicant / Petitioner had changed his Advocate and appointed a new Advocate to represent him in the Testamentary Petition. It is stated that the office objections were not removed in time, due to the Petitioner having health issues and when the Testamentary Petition was placed before the Court on 5th May, 2015, this Court had given directions to remove all office objections on or before 29th June, 2015 and in case of non compliance the Petition would be dismissed for default.

4. The learned Counsel for the Applicant states that the Advocate on record was hospitalized due to leg fracture and had not attended the Court for around six months and by virtue of which the Testamentary Petition was dismissed due to non-compliance of the office objection on 29th June, 2015.

5. The Applicant / Petitioner has thereafter stated that due to personal reasons his Advocate had lost the track of the matter and it is only recently in April, 2020 when the Applicant / Petitioner saw papers of the Testamentary Petition lying in his house that he started

pursuing the case and learnt that it was dismissed for default.

6. The Applicant / Petitioner has submitted that there is immovable property belonging to the deceased which cannot be transferred in the name of the Petitioner unless, he obtains probate of the Will of the deceased and for which the present Interim Application has been filed for restoration of the Testamentary Petition. The Applicant / Petitioner has stated that irreparable loss would be caused if the present Interim Application is not granted.

7. Having considered the submissions in the Testamentary Petition, though there is no explanation as to why it took over nearly six years to file the Interim Application from the conditional order dated 5th May, 2015 other than stating that the Applicants Advocate on record had been hospitalized due to leg fracture and not attended the Court for around six months and for that purpose a copy of medical certificate is annexed to Exhibit B to the Interim Application. Considering that the Testamentary Petition is for probate of the last Will and Testament of the deceased being the father of the Petitioner, a lenient view in the matter is taken. However, there has been gross delay in filing of the Interim Application for seeking restoration of

the Testamentary Petition. In that view of the matter, costs are required to be imposed. Hence, the following order:-

(i) The delay of 1770 days in filing the present Interim Application is condoned.

(ii) The Testamentary Petition is restored to file by recalling the conditional order dated 5th May, 2015 subject to payment of costs of Rs.20,000/- to be paid by the Petitioner in favour of “The Fathers House, Flat no. v 604, 6th Floor, Ekta Vivek CHS Ltd, 168 Kanderpada CST No.169, A New Link Road, Dahisar West, Mumbai, Maharashtra, Mumbai 400 068”.

(iii) The office objections, if any, shall be complied with within a period of three weeks from today. In the event of non-compliance with office objections within the stipulated time, the Testamentary Petition shall stand rejected without further reference to the Court.

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

[R.I. CHAGLA J.]