

Sharayu Khot.

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

INTERIM APPLICATION NO. 1808 OF 2022

IN

TESTAMENTARY PETITION NO. 409 OF 2016

Deepak Jaikumar Kapoor

...Applicant/
Petitioner

And

Ramprakash Chananmal Mehra alias
Ramprakash C. Mehra

...Deceased

Mr. G.A. Kataria for the Applicant/Petitioner.

CORAM : R.I. CHAGLA J
DATE : 10 June 2022

ORDER :

1. Heard learned Counsel for the Applicant.
2. By this Interim Application, the Applicant is seeking restoration of the Petition dismissed by order dated 2nd May 2018 by recall of the said order. Condonation of delay of 1377 days have been sought in taking out the Application.
3. The Applicant in the Interim Application has stated that

SHARAYU
PANDURANG
KHOT

Digitally signed
by SHARAYU
PANDURANG
KHOT
Date:
2022.06.14
18:24:24
+0530

the Applicant was not aware of the common order dated 2nd May 2018 passed by this Court.

4. According to the Applicant, it is came to his knowledge only in the 4th week of March 2022, when he made enquiries and came to know that the Petition was dismissed. It is stated that the Applicant/Petitioner was residing with his old aged bedridden father as there is no one to take care of his father. The Applicant has further stated that he is on medication, as he is suffering from diabetes Mellitus with hypertension and has also undergone major multiple surgeries, diagnosed for recurrent giant cell tumor mass excision and grafting at lower limbs, recurring bone marrow (cancer) on his knee and was advised complete rest/under medical treatment and hence, could not move out after several major surgeries from 2011 till 2022.

5. It is further stated that the Applicant could not approach his advocate till now and only upon approaching his advocate, he came to know about the dismissal of this Petition on account of non removal of objections. Accordingly, the present Interim Application has been filed.

6. I have considering the submissions of the learned Advocate for the Applicant/Petitioner and perused the averments in the Interim Application. I have also noted the fact that the order was passed way back on 2nd May 2018 extending the date for removal of office objections, as final opportunity in all the matters before the Court to 29th June 2018 with no possibility of an extension. If the office objections were not removed on the extended date, the Petition stood dismissed and was not be restored thereafter.

7. The Applicant has failed to remove the office objections. The only statement made apart from the claim that the Applicant was suffering from cancer and the doctor's certificate has been appended to the Interim Application, is that the Applicant only became aware of the dismissal of the Petition in the fourth week of March 2022, when he made enquiries in the Court. It is stated that the Applicant has not explained why the advocate for the Applicant was unaware of the dismissal of the Petition and the only claim made is neither the advocate nor the Petitioner were present in Mumbai at the time when the order was passed by this Court.

8. In that view of the matter, though there has been no

satisfactory explanation on behalf of the Applicant as to his ignorance of the order dated 2nd May 2018 which was conditional order passed in the matters before the Court. Considering that the Applicant/Petitioner is suffering from cancer and has undergone surgery, as well as his advocate being negligent, in the interest of justice, the relief sought for in the Interim Application is granted subject to payment of costs. Hence the following order :-

- (i) Delay of 1377 days is condoned.
- (ii) Testamentary Petition is restored, by recalling order dated 2nd May, 2018 in so far as it pertains to the above Testamentary Petition, subject to payment of costs of Rs. 30,000/- (Rupees Thirty Thousand only), which shall be paid to 'Tata Memorial Centre Cancer Research Institute', within a period of one week from the date of this order.
- (iii) Interim Application is disposed of in the above terms.

[R.I. CHAGLA J.]