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

NOTICE OF MOTION NO.109 OF 2018
IN
MISCELLANEOUS PETITION (L) NO.1722 OF 2016

Mr. Mayur Narendra Shah

...Applicant /
Petitioner

Versus

Sameer Narendra Shah

...Deceased

Bhakti Jogal with Arjun Kadam for the Applicant / Petitioner.

CORAM : R.I. CHAGLA J.

DATE : 13TH JULY, 2022

ORDER :

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

2. By this Notice of Motion, the Applicant has sought
restoration of the Miscellaneous Petition to the file of this Court by
recalling the order dated 1st August, 2017 passed by the
Prothonotary and Senior Master of this Court and for condonation of

delay of 270 days. The Notice of Motion was filed on 10th April, 2018 by the erstwhile Advocate of the Applicant / Original Petitioner. The newly appointed Advocate who has come on record moved this Notice of Motion.

3. The Applicant has stated that the order of the Prothonotary and Senior Master dated 1st August, 2017 requiring removal of office objection and failing which the Petition stand rejected under Original Side Rule 986 was passed without the knowledge of the Applicant's Advocate. It is stated by the Applicant that his Advocate has gone to his native place for Ganpati festival from 18th August, 2017 to 1st September, 2017 and office objections could not be removed and by this mistake of the Advocate, the Petition was rejected for non removal of office objections.

4. The Applicant has further stated that in the month of March, 2018, he went to his Advocate's office, to inquire as to the progress of the matter, at which time the Applicant came to know of the order dated 1st August, 2017 and this Notice of Motion was taken out immediately. There is a delay of 270 days in filing the Notice of Motion and the same be condoned.

5. Having considered the averments in the Affidavit in Support of the Notice of Motion as well as taking note of the fact that the Miscellaneous Petition is for Legal Heirship Certificate and which came to be rejected by common order dated 1st August, 2017 passed by the Prothonotary and Senior Master of this Court, a liberal view in the matter is required to be taken.

6. Further, it is noted that the mistake was of the erstwhile Advocate who was unaware of the common order dated 1st August, 2017. The Applicant being a layman should not suffer due to the mistake of the erstwhile Advocate. Hence, the following order:-

(i) The Miscellaneous Petition is restored to file by recalling the common order dated 1st August, 2017 passed by the Prothonotary and Senior Master to the extent that it applies to the Miscellaneous Petition.

(ii) The Applicant shall comply with office objections raised by the Registry within a period of two weeks from the date of this Order, failing which the Miscellaneous Petition upon being restored shall be rejected without further reference to the Court.

(iii) The delay of 270 days in filing this Notice of Motion is condoned.

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

[R.I. CHAGLA J.]