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

INTERIM APPLICATION NO.3286 OF 2022
IN
TESTAMENTARY SUIT NO.46 OF 1999
IN
TESTAMENTARY PETITION NO.237 OF 1999

Hufrish Minoo Todywalla

...Applicant /
Proposed Plaintiff

In the matter between
Phiroz Ardhesir Zaveri & Anr.

... Plaintiffs.

Versus

Nergish F. Arsiwalla & Anr.

...Defendants

Ms. Anandita K. Sawant for the Applicant / Proposed Plaintiff.
Sainand Chaugule for Defendant Nos.1 and 2.

CORAM : R.I. CHAGLA J.

DATE : 20TH OCTOBER, 2022

ORDER :

1. Heard learned Counsel appearing for the Applicant /
Proposed Plaintiff.

2. By this Interim Application, the Applicant is seeking
condonation of delay in filing the present Interim Application and for

restoration of Testamentary Suit and Testamentary Petition filed in this Court. Further relief is sought for allowing the Applicant to amend the Testamentary Suit as well as Testamentary Petition as per schedule H to the Interim Application.

3. Testamentary Suit and Testamentary Petition was dismissed on the ground of default on 29th November, 2010 by order of this Court.

4. The Applicant is the daughter of Defendant No.3. The Applicant has stated that it is only after the death of her father Minoo F. Todywalla – Defendant No.3 on 1st February, 2022, that she got knowledge of the said dismissal order of Testamentary Suit and Testamentary Petition.

5. The Applicant has stated that both the executors who were Plaintiffs in the Testamentary Suit have expired. Plaintiff No.1 had expired on 25th January, 2010 and Plaintiff No.2 had expired on 30th September, 2013. The Applicant claims to be sole surviving legal representative and one of the legatees of Minoo Todywalla under the Will and intends to proceed with the Testamentary Petition. The

Applicant has stated that her mother Dinaz M. Todywalla divorced her father i.e. Minoo F. Todywalla on 25th July, 2000. She has placed reliance upon divorce decree as well as birth certificate and Aadhar Card of the Applicant.

6. Having considered the averments in the Interim Application no grounds have been made out by the Applicant for the gross delay in taking out the Interim Application which seeks recall of the order passed way back on 29th November, 2010. It has only been stated that it was after the death of the Applicant's father Minoo Todywalla who was original Defendant No.3 in the Testamentary Suit that the Applicant got knowledge on 2nd March, 2022 about the proceedings. The Applicant claims to be the beneficiary under the Will of Minoo Todywalla. However, there is no explanation as to why the Applicant / legal heir and one of the legatees / beneficiary of Minoo Todywalla under his Will seeks to substitute herself as the Proposed Plaintiff. The Plaintiffs were the executors appointed under the Will of the deceased Sunita Pitamber and both have expired several years ago. Hence there is no case made out by the Applicant for grant of relief including for restoration of the Testamentary Suit and Testamentary Petition to the file of this Court as well as for

amendment sought by substituting the Applicant as the Plaintiff.

7. Hence the relief sought for in the Interim Application is not granted.

8. The Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]