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

NOTICE OF MOTION NO.1 OF 2022
IN
TESTAMENTARY PETITION NO.1599 OF 2015

Kiran Vasant Kulkarni

...Applicant /
Petitioner

Versus

Smt. Shakuntala Vasant Kulkarni

...Deceased

Kevin Chettiar, for the Applicant / Petitioner.

CORAM : R.I. CHAGLA J.

DATE : 22ND JULY, 2022

ORDER :

1. Heard learned Counsel for the Applicant / Petitioner.
2. By this Notice of Motion, the Applicant is seeking condonation of delay of two years and six months in filing the Notice of Motion. The Applicant is also seeking recall of order dated 9th January, 2017 passed by this Court and for restoration of the Testamentary Petition to the file of this Court. The Applicant has

sought further time to comply with the objections raised by the office of this Court.

3. The Applicant has stated in the Affidavit in Support of the Notice of Motion that, the Applicant had been assigned a job at Jamnagar and due to which he was required to travel to Jamnagar in Gujarat for executing the work and the date of joining was February, 2016. The Applicant was required to remain in Jamnagar during the week as the job was on contract basis which was executed and completed by March, 2019.

4. The Applicant has stated that though the Applicant had been diligently following up with the status of the matter, after being assigned a job in Jamnagar, it became difficult for the Applicant to follow up as he had to travel there. It was also difficult to instruct the Advocate due to his not being present in Mumbai. The Applicant is stated to be a Chemical Engineer by profession carrying on the business in the name and style of Petroleum Consulting Engineers (M) Pvt. Ltd. The Applicant has further stated that he contacted the present Advocate on record in end of July, 2019 and appraised him about the matter. After search of the case status and after taking

search of the papers, it was learnt that the Testamentary Petition had been rejected for non removal of office objections by conditional order dated 9th January, 2017 and application for restoration of the Petition was required to be filed. Accordingly, the present Notice of Motion has been filed.

5. I have considered the averments in the Affidavit in Support of the Notice of Motion as well as the submission of the learned Advocate for the Applicant. Upon considering that the Applicant was not present in Mumbai and had to be in Jamnagar, Gujarat frequently on work and was in Mumbai only on the week end and hence there was delay. Further, the present Advocate on record was instructed in July, 2019 and this Notice of Motion was immediately filed on 9th August, 2019 for restoration of the Petition. Also considering that Testamentary Petition is for grant of Letters of Administration with Will annexed and mostly uncontested, a lenient view of the matter is taken. Hence the following order:-

(i) The delay of two years and six months in filing the present Notice of Motion is condoned.

(ii) The Testamentary Petition is restored to file of this Court by recalling the conditional order dated 9th January, 2017.

(iii) The Applicant is granted six weeks time to comply with the office objections, failing which the Testamentary Petition shall be rejected without further reference to the Court.

(iv) Notice of Motion is disposed of in the above terms.

[R.I. CHAGLA J.]