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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO.40 OF 2018
IN
TESTAMENTARY PETITION NO.541 OF 2010

Mr. Narotam Dass

...Applicant /
Petitioner

Versus

Shri Kulwant Rai @ Mr. Kalwant Rai

...Deceased

Ms. Pranjali Bhandari, for the Petitioner / Applicant.

CORAM : R.I. CHAGLA J.
DATE : 22ND JULY, 2022.

ORDER :

1. Heard learned Advocate appearing for the Applicant.
2. By this Interim Application, the Applicant is seeking condonation of delay of 1884 days in taking out this Notice of Motion. Further the Applicant is seeking recall of order dated 5th July, 2012 for non removal of office objection and for restoration of the Testamentary Petition. Further, the Applicant is seeking six weeks time to remove office objections.
3. In the Affidavit in Support of the Notice of Motion at

Paragraph 4, it is stated that despite of efforts, Consent Affidavits of all the heirs whose service was not complete could not be obtained and therefore the vast gap of time. There have been deaths of some of the heirs and legal representatives mentioned in paragraph 9A of the Petition and accordingly, the Applicant has stated that steps would be required to be taken after the Petition is restored to the file of this Court.

4. Having considered the averments in the Affidavit in Support and lack of appropriate explanation for the gross delay in seeking restoration of the Testamentary Petition, i.e. recall of an order passed on 5th July, 2012 is sought in a Notice of Motion having been filed five years later on 15th September, 2017, the only reason why this Court is taking liberal view in the matter is that it is a Testamentary Petition for Probate of the Will of the deceased Kulwant Rai @ Kalwant Rai and as such uncontested.

5. However, there is no attempt in showing any diligence in pursuing the Testamentary Petition and accordingly the Testamentary Petition can only be restored subject to payment of costs. Hence, the following order:-

(i) The Testamentary Petition is restored to file by recalling the order dated 5th July, 2012 subject to payment of Rs.30,000/- payable by the Petitioner by way of Pay Order in favour of the 'Deeds for Needs Foundation', ROW No.C/4, Clover Highlands, Kondhwa, SN.25/1 to 4, N IBM Road, Pune, Pune 411 048, Maharashtra, India to be deposited with the Testamentary Department within a period of two weeks from the date of this Order.

(ii) The order dated 5th July, 2012 is accordingly recalled.

(iii) The delay of 1884 days in filing the Notice of Motion is condoned.

(iv) The Applicant / Petitioner is granted six weeks time to remove all office objections upon the Testamentary Petition being restored to file, failing which the Testamentary Petition shall be rejected without further reference to the Court.

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

[R.I. CHAGLA J.]