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

INTERIM APPLICATION NO.3196 OF 2021
IN
TESTAMENTARY PETITION (L) NO.208 OF 2019

Mr. Kunal Vijay Shinde

...Applicant /
Petitioner

Versus

Vivian John Casimir D'Souza

...Deceased

Mr. R.T. Yadav, for the Applicant / Petitioner.

CORAM : R.I. CHAGLA J.

DATE : 14TH OCTOBER, 2022

ORDER :

1. Heard the learned Counsel for the Applicant / Petitioner.
2. By this Interim Application, the Applicant is seeking condonation of delay of 676 days in taking out the present Interim Application and for extension of the twelve weeks time given earlier vide order dated 20th September, 2019. Further relief is sought for restoration of the Testamentary Petition.

3. The Applicant has stated that by an order dated 20th September, 2019 passed in Notice of Motion No.160 of 2019 in the above Testamentary Petition, the Petitioner was granted 12 weeks time to comply with all office objections. The Applicant / Petitioner has stated that after complying with all office objections and giving necessary undertakings 'File' order was passed on 18th December, 2019. However, whilst registering the Petition for giving permanent Petition number it was realized that the twelve weeks time granted by this Court had expired and accordingly the Petition was not registered and stood rejected on 14th December, 2019.

4. The Applicant has stated that there is a delay in filing the present Interim Application of 676 days in view of the Advocate of the Applicant not being present in Mumbai and at his native place where his father was seriously ill. Thereafter, the Interim Application for extension of time to comply with office objections and restoration of the Petitioner was affirmed on 21st February, 2020 but upon affirmation, the Advocate of the Applicant noticed that there were incorrect prayers in the Interim Application and accordingly, the same was not lodged. The Applicant has thereafter relied upon Covid 19 pandemic and the lockdown as well as the fact that the Applicant's

Advocates family members requiring hospitalization and accordingly not in a position to file Interim Application. In view thereof, the present Interim Application is taken out.

5. Having considered the averments in the Interim Application as well as noting the fact that the Applicant had removed all office objections. However, due to inadvertence in computing the 12 weeks period which had been granted by order dated 20th September, 2019 for compliance with office objections, the Petition did not receive registered number and Petition stood rejected on expiry of the 12 weeks period which was on 14th December, 2019. Further it is noted that the Advocate of the Applicant was not present in Mumbai and he was at his native place in view of his family members being unwell, and as a result of which there was a delay in filing Interim Application. Thus there has been default on the part of the Advocate of the Applicant and by virtue of which the Applicant should not made to suffer. The relief sought for in the Interim Application requires to be granted. Hence, the following order:-

(i) Delay of 676 days in taking out the present Interim Application is condoned.

(ii) The Testamentary Petition is accordingly restored to file and rejection of the Testamentary Petition is recalled.

(iii) A further period of three weeks from the date of this order is granted for removal of office objections. It is made clear that in the even of failure to remove office objections within the stipulated period, the Testamentary Petition shall stand disposed of without further reference to the Court.

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

[R.I. CHAGLA J.]