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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3165 OF 2021

IN

TESTAMENTARY SUIT NO. 67 OF 2001

Mrs. Cynthia Pinto

...Applicant/
Plaintiff

Versus

Stella Matilda Pinto

...Caveator

Mr. J.M. D'Silva a/w Jacinta D'Silva for the Applicant/Plaintiff

CORAM : R.I. CHAGLA J

DATE : 9TH NOVEMBER, 2022

ORDER :

1. Heard learned Counsel appearing for the Applicant/Original Plaintiff. None appears for the Defendant/Caveator despite service.

2. By this Interim Application, the Applicant is seeking condonation of delay in filing Application for restoration of the Suit by setting aside the order of dismissal dated 10th April, 2017.

3. The Applicant has stated that the Testamentary Suit had been agreed to be amicably settled upon the Caveator/Defendant approaching the Applicant and her brothers (the other heirs of the deceased). It was agreed that Consent Terms will be filed in the suit. However, the Advocate for the Applicant had expressed his inability to continue with the matter in view of his advanced age and ill health. Thereafter the present Advocate upon collecting papers from erstwhile Advocate and checking the status of the matter on the website of this court had learnt that the above suit has been dismissed on 10th April, 2017 wherein it was recorded that “None appears for the parties”.

4. The present Advocate for the Applicant has addressed a letter dated 6th October, 2022 informing the Defendant/Original Caveator that the suit has been dismissed for non prosecution on 10th April 2017 and present Interim Application has been filed for restoration of the Suit. In view of the Advocates for the Applicant having been informed that the Defendant/Original Caveator had discharged their erstwhile Advocate, service of the present Interim Application has been made directly on the Defendant. Upon the Defendant/Original Caveator being served, the Defendant/Original Caveator has

recorded that she has no objection to the restoration of the suit and consents to the same.

5. In view of consent terms being filed between the parties in the Testamentary Suit as the matter has been settled, it would be appropriate to allow the Interim Application by condoning the delay in filing the application for restoration of the suit. Hence the following order is passed.

- i) The delay of 1595 days in filing Interim Application for restoration is condoned.
- ii) The order dated 10th April, 2017 is recalled and the Testamentary Suit No. 67 of 2001 is restored to file.
- iii) The Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]