

Sharayu Khot.

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

NOTICE OF MOTION NO. 241 OF 2018

IN

MISCELLANEOUS PETITION (L) NO. 1926 OF 2016

Smt. Priti Prasad Belose

...Petitioner

And

Prasad Shantaram Belose

...Deceased

Ms. Netra Kargutkar for the Petitioner.

CORAM : R.I. CHAGLA J

DATE : 11 October 2022

ORDER :

1. Learned Counsel appearing for the Applicant/original
Petitioner.

2. By this Notice of Motion, the Applicant is seeking
condonation of delay of 533 days in filing the Notice of Motion and
for setting aside the order dated 24th January 2017 passed by the
Prothonotary & Senior Master, by which conditional order, the

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Miscellaneous Petition came to be rejected under Original Side Rule 986.

3. The Applicant in Affidavit in Support has stated that the objection raised in the Miscellaneous Petition by the office of this Court was with regard to mentioning of amount of petitionary benefit and to pay deficit Court fees, which was required to be complied with. The Applicant has stated that several letters were addressed to the office of Senior Superintendent of Post Office, Mumbai, North East Division, Bhandup (E), Mumbai 400 042 in that connection.

4. There was non co-operation of the officer of the Senior Superintendent of Post Office and the Applicant has stated that in view of there being lack of financial support and the Applicant and her mother-in-law residing at the native place District Ratnagiri, she was due to unavoidable circumstances, unable to file Notice of Motion within time. Thus, there was delay of one year and 229 days in filing Notice of Motion which was not deliberate.

5. The Applicant has further stated that the reason for non removal of office objections was on account of the reasons which

were beyond the Applicant's reach and due to non furnishing of payable pentionary amount and hence, requisite Court fees could not be paid.

6. The Applicant has referred to the order passed by this Court on 11th March 2019 by which this Court had noted the submission of the Applicant's Advocate that the postal department was unwilling to disclose the amount payable by them and only after such amount was known, Court fees can be computed and paid. This Court, accordingly, directed the Postal Department to inform the Registry of this Court, the amount due to the Applicant. Thereafter, response was received from the Senior Superintendent of Post Office, Mumbai vide letter dated 19th March 2019 which is referred to in the order dated 25th March 2019. However, the amount due to the Applicant was not mentioned and it had only been stated that the matter had been taken up with the Ministry of Law and Justice, the Department of Legal Affairs and would be communicated to the Registrar of this Court after receipt of reply. Senior Superintendent of Post Office, Mumbai was accordingly directed to remain present in Court on 2nd April 2019. The Assistant Superintendent of Postal Authority, Government of India was present in Court and stated that

the amount payable to the Defendants shall be computed and necessary information is expected to be received within a period of two weeks. On next date i.e. 23rd April 2019 necessary information was received from the Department of Post as stated by the learned Counsel appearing for the Applicant and which provided the information as to the amount due and payable to the deceased. The present Notice of Motion has been filed prior thereto i.e. on 6th September 2018 for restoration of the Miscellaneous Petition by setting aside of the order of Prothonotary & Senior Master of this Court on 24th January 2017. She has stated that due to non receipt of information as to the amount due to the Applicant the office objections could not be removed in time. Hence, relief sought for in the Interim Application be allowed.

7. Having considered the submissions and averments in the Interim Application as well as prior orders of this Court, wherein it was noted that the Department of Post had only provided information as to the amount due and payable as to the deceased on 23rd April 2019 as recorded by this Court, the order of the Prothonotary & Senior Master dated 24th January 2017 by which Miscellaneous Petition came to be rejected for non removal of office objections

under Original Side Rules 986 requires to be set aside and the Miscellaneous Petition requires to be restored. Hence the following order is passed. :-

- (i) Delay of 533 days in filing the Notice of Motion is condoned.
- (ii) Miscellaneous Petition (L) No. 1926 of 2016 is restored to file by setting aside the order dated 24th January 2017 passed by the Prothonotary & Senior Master of this Court.
- (iii) The Applicant/original Petitioner shall within a period of three weeks from the date of uploading of this order remove the office objections and failing which the Miscellaneous Petition shall stand rejected without further reference to the Court.
- (iv) Notice of Motion is disposed of in the above terms.

[R.I. CHAGLA J.]