

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

INTERIM APPLICATION NO. 201 OF 2023
IN
TESTAMENTARY PETITION NO. 861 OF 2019

Mumtaz Munaver Peermohmed

...Applicant/Petitioner

In the matter between

Salim Shabanali Patel

...Deceased

Ms. Nerissa Almeida i/by Mr. Siddiqui V. Munnawar for Applicant / Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 3rd March, 2023

P.C. :

1. By the present Interim Application, Applicant seeks restoration of Testamentary Petition No. 861 of 2019. The said Testamentary Petition, for non-compliance of office objections came to be dismissed by a common order dated 26th April, 2022.

2. Learned Advocate appearing on behalf of the Applicant/Petitioner has taken me through the Interim Application and pointed out therefrom that the Applicants were under the *bona fide* belief that the requisition of the

Testamentary Department had been complied with before the date of common order. And infact the said Testamentary Petition was listed on board on 28th April, 2022. However the same did not reach due to paucity of time. The same was thereafter, adjourned to 30th June, 2022. However, the said Testamentary Petition did not list on 30th June, 2022.

3. The learned Advocate for the Applicant/Petitioner mentioned the matter and circulation was granted on 23rd September, 2022. However, once again the matter did not list and was again mentioned by the learned Advocate for the Petitioner. It was only when the learned Advocate for the Applicant/Petitioner made an inquiry in the month of November, 2022, that the Testamentary Department informed the Advocate for the Applicant/Petitioner that the said Testamentary Petition had been dismissed vide the common order. Petitioners are thus taken out the present Interim Application seeking condonation of delay and restoration of the Testamentary Petition No.861 of 2019.

4. I have heard learned Counsel and perused a copy of the said

Interim Application and find that the same deserves to be allowed in the interest of justice. The Interim Application is therefore, allowed in terms of prayer

Clause a, b and c which reads as follows:-

- “a. To condone the delay of 426 days, in taking out the present Interim Application.
- b. That this Hon’ble Court be please to restore Testamentary Petition No. 861 of 2019.
- c. Petitioner be permitted to proceed with the Petition subject to comply with the office requisitions within such time as the Hon’ble Court may deem fit.”

5. Interim Application is accordingly disposed of.

(ARIF S. DOCTOR, J.)