

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

**NOTICE OF MOTION NO.63 OF 2019
IN
TESTAMENTARY PETITION NO.1711 OF 2013**

Denzil Christopher D'Mello alias

Denzil Philip D'Mello alias

Denzil D'Mello : Deceased

Darrel D'Mello : Petitioner.

Mr. Gobinda Mohanty i/by Mohanty and Associates for the Applicant/Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 10th APRIL 2023

P.C. :

1 By the present Notice of Motion the Applicant/Petitioner seeks restoration of Testamentary Petition No.1711 of 2013 which came to be dismissed pursuant to the common order dated 5th May 2015 (G. S. Patel, J.).

2 Learned Counsel for the Applicant/Petitioner submits that the only objection which required to be complied with was service of citations upon the sister of the Petitioner who reside beyond the jurisdiction of this Court. He submits that in the course of effecting service on the sisters of the Petitioners

delay was occasioned since fresh citations etc had to be issued.

3 I have heard Learned Counsel for the Applicant/Petitioner, perused the Interim Application and find that the reason stated for the delay though has not been adequately explained, inasmuch as the Applicant averred that the last date for complying with the office objection under order dated 5th May 2015 was 29th June 2015 and, Application was made before this Court only on the last day i.e. 29th June 2015 for extension of time to remove office objections with the department for issuance of fresh citation.

4 In any event, I find that interest of justice would be subserved if one further chance is given to the Applicant to comply with the common order, however, the same shall be subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand only) to the Maharashtra State Legal Services Authority. Payment of costs is a condition precedent.

5 Notice of Motion is therefore allowed in terms of prayer clauses (a), (b) and (c) which read as under :-

- “(a) That the delay of 224 days in taking out the present Notice of Motion be condoned;*
- (b) That this Hon’ble Court be pleased to set aside the conditional Order dated 5th May 2015 and restore the present Testamentary Petition No.1711 of 2013 on record ;*
- (c) That this Hon’ble Court be pleased to direct the Office to issue fresh citations and permit the Petitioner to serve the said citations through courier services.”*

6 The present Notice of Motion is accordingly disposed of.

7 It is made clear that this order does not decide the rival contentions raised in this Notice of Motion.

(ARIF S. DOCTOR, J.)