

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

NOTICE OF MOTION NO. 06 OF 2022
IN
TESTAMENTARY PETITION NO. 1442 OF 2016

Lachaiah Rajaiah Manchala

...Deceased

Rajeshwari Lachayya Manchala & Anr.

...Applicants/Petitioners

* * *

- Mr. Waquar Ahmed, for Petitioner (Through V.C.)

* * *

CORAM : MANISH PITALE, J.

DATE : 30th NOVEMBER, 2023.

P. C. :

1. By this notice of motion, the original Petitioners are seeking restoration of the probate petition, which stood dismissed on account of failure to remove office objections within the time period specified by this Court.

2. This was in pursuance of an order dated 02nd May, 2018, passed by this Court in the present petition and other such petitions.

3. There is delay of 300 days in moving the notice of motion.

4. The learned Counsel appearing in support of the notice of motion submits that one particular office objection could not be removed, as it pertained to the necessity of placing on record consent affidavit of one of the legal heirs of the deceased. The other legal heirs had already given their consent affidavits, which were placed on record alongwith the petition.

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5. It is submitted that subsequent to dismissal of the probate petition, the only remaining legal heir of the deceased did give consent affidavit dated 12th April, 2019 and the same was subsequently placed on record of this Court.

6. It is submitted that the process of obtaining the consent affidavit took some time, as a consequence of which, the restoration application could not be moved within the period of limitation.

7. It is submitted that in the interest of justice, this Court may consider restoring the petition so that it could be considered on merits, particularly when consent affidavits of all the legal heirs are now on record and the Petitioners are ready to remove any further office objections that may be pointed out by the department.

8. This Court finds that although the order by virtue of which the probate petition stood dismissed, also observed that this petition and other such petitions could not be restored thereafter, in view of the facts and circumstances brought to the notice of this Court in the present case, it would be appropriate and in the interest of justice that the prayers made in the notice of motion are favourably considered.

9. This is particularly in the light of the fact that the only

remaining legal heir has given consent affidavit dated 12th April, 2019, which has been already placed on record on behalf of the Petitioners.

10. In view of the above, the notice of motion is granted. Delay is condoned and the probate petition is restored to file, subject to the Petitioners removing further office objections, if any, within a period of six weeks from today.

11. Notice of Motion stands disposed of.

(MANISH PITALE, J.)