

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

**INTERIM APPLICATION NO. 1424 OF 2020
IN
TESTAMENTARY PETITION (LODGING) NO. 1180 OF 2011**

Albert Manuel Sequeira
alias Albert Sequeira

...Deceased

Flora George Sequeira
alias Flora Sequeira

...Applicant/Petitioner

* * *

- Mr. Kanhaiya S. Yadav, for Applicant / Petitioner.

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CORAM : MANISH PITALE, J.

DATE : 20th FEBRUARY, 2024.

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P. C. :

1. Heard learned counsel for the applicant (original petitioner).

2. By this application, the applicant is seeking restoration of petition filed for grant of probate of Will dated 27th February, 1985, executed by the deceased.

3. The petition was dismissed for non removal of office objections on the basis of conditional order dated 01st October, 2014, which is filed at Exhibit "A" to the application.

4. It is specifically stated in the application that, the applicant being a senior citizen and a lady, unaware of the procedural formalities, had followed up with her advocate with regard to the status of the said petition. According to the applicant, it was only in

the year 2018, that she was informed about dismissal of the petition by the aforesaid conditional order.

5. It is specifically stated that in such circumstances the applicant was constrained to engage another advocate, through whom she filed Notice of Motion (Lodging) No. 220 of 2018, seeking restoration of the petition.

6. On 16th April, 2019, the then advocate representing the applicant withdrew the Notice of Motion. It is not clear from the order dated 16th April, 2019, passed in Notice of Motion No. 207 of 2018, as to why the notice of motion was withdrawn, particularly when no liberty was sought from the Court.

7. Be that as it may, it is stated in the present application that thereafter, the applicant was constrained to engage the present advocate, who filed the instant application for restoration of the petition.

8. It is brought to the notice of this Court that the petition stood dismissed even before citations were issued and that if this Court grants an opportunity to the applicant, she would be able to pursue the petition on merits.

9. This Court has considered the material on record. It is evident that there is a huge delay of 1878 days in filing the instant

application for restoration. But, the facts brought to the notice of this Court, do indicate that the applicant cannot be said to be at fault for the said delay in approaching this Court. The earlier notice of motion filed for the very purpose of restoration of the petition was not taken to its logical end. There is nothing to show that the applicant had anything to gain from the delay that has occurred in finally approaching this Court by way of the present application.

10. Taking a liberal view in the matter, particularly because the petitioner is a lady about 78 years old, this Court is inclined to allow the present application.

11. In view of the above, the application is allowed. Delay is condoned and the petition is restored to file, subject to the office objections being removed, within a period of four weeks from today.

(MANISH PITALE, J.)