

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

INTERIM APPLICATION NO.3146 OF 2024
IN
TESTAMENTARY PETITION NO.2323 OF 2019

VISHAL
SUBHASH
PAREKAR

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Divyang Jayantilal Turakhia ...Applicant

VS.

Savitaben Jayantilal Turakhia ...Deceased

Mr. Rohan Sawant a/w. Mr. Dishant Chitalia, for the Applicant.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 25, 2024

P.C.:

1. Heard the learned counsel for the applicant.
2. The Testamentary Petition was restored pursuant to an order dated 6th June, 2023. The applicant asserts that, the petitioner could not comply with the requirement to file affidavit of the attesting witness as the intimation to appear and file such affidavit has been returned unserved. The petitioner/applicant therefore proposes to file an affidavit of witness in accordance with Rule 381 of the Bombay High Court (Original Side) Rules, 1980. The application is supported by documents including the correspondence addressed on behalf of the petitioner to the attesting witness. It appears that the intimation could not be served on the attesting witness. An affidavit of service is also filed.
3. For the reasons assigned in the application and the fact that

there is material to show that the applicant has made efforts to serve the attesting witness so as to file their affidavits in compliance with the requirements, I am inclined to allow the application in terms of prayer clause (a) and (b), which read as under:-

(a) Testamentary Petition No. 2323 of 2019 may be restored.

(b) The applicant may be permitted to file affidavit of his wife and daughter in law of the deceased, namely Jigna Divyang Turakhia in compliance with Rule 384 of the Bombay High Court (Original Side) Rules, 1980.

Application disposed.

(N. J. JAMADAR, J.)