

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 3199 OF 2024
IN
TESTAMENTARY SUIT NO. 62 OF 2017

Madhav Mritunjoy Jain

...Applicant

In the matter between

Nirmala Kumari Jain

...Deceased

Mritunjoy Kumar Jain

...Petitioner/Plaintiff

Vs.

Prakash Jain

...Caveator/Defendant

Adv. Tej Lapsiya i/by Khushbu Prabhu for the Applicant.

Adv. Kavita A. Shah for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 30TH JANUARY, 2025

P.C.:-

1. By way of the present Interim Application, the Applicant seeks the following reliefs:

“(a) That the delay delay of 782 days in filing the present Application be condoned;

(b) That the present Original Petition be converted into a Letters of Administration with Will annexed;

(c) That this Hon'ble Court be pleased to allow the Applicant to amend the Petition in terms of the Schedule annexed hereto;"

2. Ms. Shah, Learned Counsel appearing on behalf of the Respondent (Caveator) opposes the Application on the ground that the Suit abated and there was no prayer for setting aside the abatement. She submits that the delay has also not sufficiently been explained nor has reasonable cause to condone the delay is shown. She submits that the Applicant is liable to explain the delay and therefore the same ought not to be condoned.

3. After having heard Learned Counsel and on a perusal of the averments made in the Interim Application, I find that sufficient cause has been set out. The Application has in paragraph 9 stated that the Original Petitioner/Plaintiff had expired in June 2020 during the Covid pandemic period and the Applicant was a resident of United States of America and did not visit India. The Application sets out that the Applicant came to Mumbai in June 2024 and it is only then that he approached the Advocates. Paragraph 9 of the Interim Application sets out as follows:

"9. The Applicant states that the Original Petitioner/Plaintiff had expired in June 2020 during the Covid pandemic period. The Applicant states that being an ordinary resident/citizen of United States of America, the Applicant does not visit India frequently except for his official visits in Bangalore, particularly

after his parents' demise. After the situation normalized, the Applicant tried to collate and put together relevant documents and data of the estate of his deceased parents including the pending litigations thereto which took substantial time for him. The Applicant was not aware about the proper legal procedure in order to proceed further and was at the look out for a lawyer to handle all his legal matters. After the Applicant came to Mumbai in June 2024 he had approached the present Advocate/s in this Interim Application and briefed them about the matter. The present Advocate had informed that an Interim Application will have to be taken out for converting the present petition into letters of administration and also for condonation of delay as there is a delay of more than 90 days from the date of the death of the original Petitioner/Plaintiff. The Applicant had handed over the relevant papers and proceedings as collected and available with him for preparation of the necessary Interim Application to the present Advocate around first week of July 2024. Thereafter upon his return from Bangalore to Mumbai, the Applicant had immediately affirmed and taken out this Interim Application to convert the Petition from a Probate Petition to a Petition for Letters of Administration with the Will annexed and also to amend the Petition."

4. I find that the interest of justice would require me to allow the present Application and have the Testamentary Suit heard and decided on merits. Hence, the Interim Application is allowed in terms of prayer clauses (a), (b) and (c) already reproduced above.

5. Amendments to be carried out within a period of two weeks from today.

6. At this stage, I am informed that the Applicant and the Respondent are brothers and are attempting to amicably resolve their disputes and

differences. The Court was inclined to appoint a mediator, however, Learned Counsel amongst themselves assured the Court that since attempts to amicably settle were being made by the parties.

7. Hence, list the matter on 13th February, 2025.

(ARIF S. DOCTOR, J.)