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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 2361 OF 2024  
IN  
APPEAL (L) NO. 21041 OF 2024**

Vithabai Sitaram Birje .. Applicant

**Versus**

Anant Sitaram Birje and Anr. .. Respondents

**WITH  
APPEAL (L) NO. 21041 OF 2024  
IN  
TESTAMENTARY SUIT NO. 28 OF 2019**

Vithabai Sitaram Birje .. Appellant

**Versus**

Anant Sitaram Birje and Anr. .. Respondents

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***Adv. Shriram S. Redij, for the Applicant/Appellant.***

***Adv. Omprakash Pandey, a/w Ms. Suchita Pandey, for  
Respondent No. 1.***

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**CORAM: B. P. COLABAWALLA &  
FIRDOSH P. POONIWALLA, JJ.**

**DATE: JANUARY 23, 2026**

**P. C.**

- 1.** The above Interim Application is filed seeking a condonation of a delay of 477 days in filing the above Appeal.

**2.** Having heard the learned Counsel appearing for the Applicant as well as the learned Advocate appearing for Respondent No.1, we find that sufficient explanation has been given for condoning the delay. The delay in filing the above Appeal is therefore condoned.

**3.** The Interim Application is disposed of in the aforesaid terms. No order as to costs.

**4.** With the consent of parties, the above Appeal is taken up for hearing.

**5.** The above Appeal challenges the order dated 13th February 2023, read with the order dated 3rd March 2023. On the date when the impugned order was passed, none appeared on behalf of the Defendant. The Plaintiffs, before the learned Single Judge (Respondent Nos. 1 and 2 herein), made a statement that the caveat and the Affidavit in support of the Testamentary Petition were not served. The learned Judge, therefore, opined that since 4 years had elapsed, and the caveators had not served a copy of the caveat on the Plaintiffs/Petitioners, he directed that the Testamentary Suit stands dismissed and the office was directed to proceed with Testamentary Petition No. 1906 of 2017 as uncontested.

6. From the record, we find that the findings given by the learned Single Judge were on the basis of the statement made on behalf of the Plaintiffs/Petitioners, and which are factually incorrect. From the record, we find that the caveat was in fact served on Petitioner No.2 as far back as on 16th March 2018. This fact was not brought to the notice of the learned Single Judge, and which prompted him to come to the conclusion that the caveat was not served on the Plaintiffs/Petitioners. Once we are satisfied that the caveat was served, the learned Single Judge could not have dismissed the Testamentary Suit and directed that the Testamentary Petition be proceeded uncontested.

7. In view of the aforesaid discussion, the above Appeal is allowed and the impugned order dated 13th February 2023, read with the order dated 3rd March 2023 are hereby set aside.

8. The Testamentary Suit is now restored to the file of this Court, which shall proceed in accordance with law.

9. At this stage, we are informed that even the letters of administration have now been issued on 16th March 2024. In light of the fact

that we have restored the Testamentary Suit itself to file, any letters of administration granted are also hereby set aside.

**10.** In light of the disposal of the above Appeal, nothing survives in any pending Interim Application, and the same is disposed of accordingly.

**11.** This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[FIRDOSH P. POONIWALLA, J.]**

**[B. P. COLABAWALLA, J.]**