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

INTERIM APPLICATION NO. 3737 OF 2025

IN

MISCELLANEOUS PETITION NO. 499 OF 2025

Chandrakant Valjibhai Chotaliya alias Patel .. Applicant

Versus

Uttamkumar Valji Patel and Anr. .. Respondents

IN THE MATTER OF

Chandrakant Valjibhai Chotaliya alias Patel .. Misc. Petitioner

Versus

Uttamkumar Valji Patel .. Orig. Petitioner

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- Ms. Neha D. Nagotaneekar, Advocate for Petitioner / Applicant.
- Mr. B. G. Saraf, Advocate for Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 20, 2025.

P.C.:

1. Heard Ms. Nagotaneekar, learned Advocate for Petitioner / Applicant and Mr. Saraf, learned Advocate for Respondent.

2. This Interim Application seeks condonation of delay of 3 years in filing the Miscellaneous Petition No.499 of 2025 for revocation of Probate dated 06.02.2018 passed in Testamentary Petition No.137 of 2017. Applicant is the elder son of deceased Valji Mavji Patel alias Chotaliya who expired on 29.07.2016 in Gujarat. His younger brother filed Testamentary Petition No.137 of 2017 in this Court seeking issuance of Probate.

3. In those proceedings Respondent's brother with consent of wife and married daughter of deceased obtained the grant. Citation was not served on Applicant. Applicant was claimed to have abandoned the family. When Applicant came to know about issuance of grant on the basis of Will dated 16.03.2016 prepared in English language by his father, he approached this Court for setting aside the grant.

4. In the original Testamentary Petition No.137 of 2017 filed by brother of Applicant it was claimed that address of Applicant was not known but that was not the truth. Respondent was having knowledge about the Applicant's whereabouts and that he was a resident of village Fulsar, Taluka Bhavnagar in Gujarat which was at distance of 40 kms from the village where their father expired.

5. Applicant approached one Advocate Mr. V. R. Tripathi who filed Interim Application No.1 of 2019 for revocation of grant which was rejected on 04.12.2019 for non-removal of office objections. From record of the case, it is seen that Advocate Mr. V. R. Tripathi filed Interim Application No.441 of 2019 for setting aside of Probate and Interim Application No.1 of 2019 for condonation of delay which was listed before the learned Prothonotary and Senior Master on 04.12.2019. Further record shows that Interim Application No.441 of 2019 is not dismissed and it is still pending however Interim

Application No.01 of 2019 was dismissed for non-removal of office objections. Therefore Mr. V. R. Tripathi, Advocate of Applicant filed Interim Application No.619 of 2020 for restoration of the dismissed Interim Application. This position is informed by Mr. Tripathi to Applicant's Advocate by his letter dated 13.07.2024 pursuant to which Advocate for Applicant filed third party Application in the Testamentary Department to obtain a certified copy of the Testamentary Petition and the Probate issued by this Court.

6. On 28.08.2024 third party Application was granted and on 22.11.2024 certified copies of Testamentary Petition and Probate was received by Applicant. On the basis of the above, Miscellaneous Petition No.499 of 2025 is filed for revocation of grant on 07.01.2025 by Applicant through his present Advocates.

7. There is delay in filing the Petition therefore Interim Application (L) No.11043 bearing Final No.3737 of 2025 is filed for condonation of delay.

8. Ms. Nagotaneekar, learned Advocate for Applicant would submit that Respondent No.1 who is his younger brother has deceived the Applicant and misrepresented to the Court and obtained the grant behind his back. She would submit that certified copies of the grant and Testamentary Petition were received by Applicant only on 22.11.2024. She would submit that Miscellaneous Petition for

revocation was prepared in December 2024 but due to medical ailment and old age the Applicant could not travel from Bhavnagar, Gujarat to Mumbai to affirm the Petition which led to the delay.

8.1. Accordingly, she would submit that, in view of above, there is no delay at all. She would submit that initially Advocate V.R. Tripathi had represented Applicant and filed Interim Applications on his behalf for setting aside of the grant but that Application was not pursued by him. She would submit that thereafter due to COVID lockdown there was a hiatus. That Application was dismissed for non-prosecution.

8.2. In the interregnum, she would submit that only in the year 2024 when the certified copies were received, the present proceedings were filed forthwith. Hence, she would submit that delay at the highest can be countenanced only between 06.02.2018 and 20.03.2020. Hence she would persuade the Court to condone the delay and allow the Application.

9. *PER CONTRA*, Mr. Saraf learned Advocate for Respondent No.1 would submit that he has filed Affidavit dated 25.08.2025 and contended that there is admittedly delay in filing the Petition. He would submit that period of limitation began to run from the year 2018 and expired in the year 2021. He would submit that though Applicant filed Application in the year 2019 it was dismissed for non-

removal of office objections. He would submit that negligence, mistake or lapse on the part of Advocate cannot be an excuse for condoning delay or extending limitation. He would vehemently submit that the plea of Applicant that earlier Advocate did not file a proper Application cannot be a legally sustainable ground. He would submit that Respondent No.1 has acquired valuable legal rights in the immovable property by efflux of time which now cannot be disturbed after 7 years after the grant has been issued. Hence, he would submit that Application for condonation of delay be dismissed.

10. I have heard Ms. Nagotaneekar, learned Advocate for Applicant and Mr. Saraf learned Advocate for Respondent No.1 and perused the record of the case. Submissions made by both learned Advocates at the bar has received due consideration of the Court.

11. It is seen that citation of Petition was not served on Applicant by Respondent before the original grant was obtained. It was claimed in the Petition his whereabouts are not known and he had abandoned the family. In so far as issue of delay is concerned it is true that the period of limitation as prescribed under Article 137 of Limitation Act, 1963 would be applicable. However in the present case it cannot be said that Applicant has approached this Court after an inordinate delay. Infact Interim Application No.01 of 2019 was filed by Applicant through Advocate Mr. V.R. Tripathi which was dismissed on

04.12.2019 due to non-removal of office objections.

12. Thereafter Applicant filed fresh Interim Application for setting aside of said rejection order. However the Advocate of Applicant thereafter did not pursue and prosecute the proceedings further. Thus, it is seen that bonafides of Applicant to challenge the grant stands proven as Applicant had approached this Court in the year 2019 itself.

13. In so far as issue of limitation is concerned the Supreme Court has waived the period between 20.03.2020 to 28.03.2022 for the purpose of limitation due to Covid-19 pandemic by passing appropriate directions in *Suo Moto* Petition Nos.3 of 2020 and 4 of 2020. Thereafter it is seen that the earlier Advocate did not take any steps and he by his letter dated 13.07.2024 informed Applicant's present Advocate about the steps taken by him.

14. It is thereafter seen that the present Advocate applied for certified copies by filing third party Application on behalf of Applicant. It is only when this third party Application was allowed on 28.08.2024 and certified copies of grant and earlier Testamentary Petition were received on 22.11.2024 the present Application was filed immediately alongwith fresh Application for setting aside of grant.

15. In view of the aforesaid facts and circumstances and the role of Applicant, I am inclined to accept the submissions made by Ms.

Nagotanekar and allow the Application for seeking condonation of delay of 3 years or any other period based upon the delay that has occurred in view of the aforementioned timeline.

16. Reason given by Applicant in my opinion constitutes a sufficient cause. There was indeed lapse on the part of Advocate representing Petitioner. The Supreme Court in the case of *Nitin Mahadeo Jawale Vs. Bhaskar Mahadeo Mukte*¹ has held that lapse on the part of the Advocate constituted sufficient ground for condonation of delay.

17. The Interim Application thus stands allowed in terms of prayer clause 'a'. In so far as prayer clause 'b' is concerned, the said relief cannot be granted by this Court in the Interim Application. Applicant is free to explore and approach the necessary forum for the said relief of injunction.

18. Considering the above Interim Application (L) No.11043 of 2025 i.e. Interim Application No.3737 of 2025 is allowed and disposed.

19. List the Miscellaneous Petition No.499 of 2025 seeking revocation of grant before the Court according to its turn.

[MILIND N. JADHAV, J.]

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