

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

INTERIM APPLICATION (L) NO. 6102 OF 2026
IN
TESTAMENTARY SUIT NO.119 OF 2018
IN
TESTAMENTARY Petition NO.973 OF 2016

Abdul Gaffar Shaikh Chand Alias
Abdul Gaffar Shaikh

...Applicant/
Plaintiff

Versus

Abdul Kadar Shaikh

...Defendant

Ms. Pranjali Bhandari for the Applicant/Plaintiff

Ms. Richa Gada i/b Ms. Vindu Prakash Pandey for the Defendant

CORAM : SHARMILA U. DESHMUKH, J.

DATE : MARCH 04, 2026

P. C. :

1. The Interim Application has been preferred seeking recall of the order dated 9th December, 2025, dismissing the Petition for non-prosecution and for condonation of delay of 36 days in filing the application. Learned counsel appearing for the Applicant submits that IN the Testamentary Suit, the affidavit of evidence has already been filed and did not come up for hearing till 12th November 2025. She submits that due to certain health issues, the advocate for the Plaintiff had stopped attending the Court and therefore was not aware of the

listing of the matter. She submits that there is no negligence or want of bonafide on part of the Applicant.

2. *Per contra*, learned counsel appearing for the Defendant would vehemently oppose the application and would submit that there is no sufficient cause demonstrated for recall of the order dated 9th December, 2025. She submits that Petition was listed on Board and as none appeared on behalf of the Plaintiff, the Petition came to be dismissed.

3. It is specifically stated that the non-attendance by the advocate for the Plaintiff on 9th December, 2025 was due to health issue. In any event, the litigant cannot be made to suffer for default on the part of the advocate. The Applicant is diligently pursuing the matter which is evident from the fact that the affidavit of evidence has already been filed by the Plaintiff. In view thereof, there is sufficient cause for recall of the order dated 9th December, 2025 and for condoning the delay of 36 days.

4. The Interim Application is allowed.

5. The Testamentary Petition and the Testamentary Suit are restored to file. Stand over to **25th March 2026** for recording further evidence of PW-1.

[SHARMILA U. DESHMUKH, J.]