

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 740 OF 2011

Hamida Parveen Abdul Hakim	 Deceased
Mohammed Rayees Abdul Hakim	 Petitioner
AND	
Smt. Nigar Sultana Abdul Hakim	 Applicant

Mr.D.R.Mishra for the Petitioner.

None for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 27th FEBRUARY, 2019

P.C.

By this petition, the petitioner seeks succession certificate in respect of certain debts belonging to Ms.Hamida Parveen Abdul Hakim who died on 26th March,2010. A copy of the death certificate is annexed to the petition.

2. In paragraph (3) of the petition, it is stated that the said deceased died intestate. In paragraph (4) of the petition, the names of the legal heirs and next-of-kin according to the Muslim Law applicable to the deceased and the parties are setout. It is stated in paragraph (4) that the husband of the deceased predeceased the deceased. The parents of the deceased predeceased the deceased. In paragraph (5) of the petition, it is stated that the petitioner who is the son of the deceased is entitled to

claim 1/5th share of the estate.

3. The petitioner has filed a consent affidavit of the other legal heirs and next-of-kin whose names are disclosed in paragraph (4) at serial nos. 1,3,4,5 giving their free and full consent for grant of succession certificate without service of notice and without justifying surety of respective shares in the estate of the deceased.

4. Mr.Mishra, learned counsel appearing for the petitioner fairly invited my attention to the affidavit in reply filed by Ms.Nigar Sultana Abdul Hakim, one of the daughter of the said deceased. He submits that none of the allegations made by the petitioner in the said affidavit are relevant for the purpose of granting heirship certificate. Learned counsel on instruction states that the petitioner undertakes to pay 1/6th share in the estate of the said deceased to the said Ms.Nigar Sultana Abdul Hakim upon getting payment from the Canara Bank and Punjab National Bank lying in the accounts of the said deceased with accrued interest if any upon this court granting succession certificate in favour of the petitioner.

5. A perusal of the record indicates that the legal heirs whose names are disclosed in paragraph (4) have already given consent in favour of the petitioner for grant of succession certificate in favour of

the petitioner.

6. None appeared for the said Ms.Nigar Sultana Abdul Hakim when the matter was called out. However, I have perused the averments made in the affidavit dated 16th December,2011. A perusal of the said affidavit clearly indicates that the said Ms.Nigar Sultana Abdul Hakim has not propounded any Will in respect of the said deceased. There are various allegations made against the petitioner and other legal heirs of the said deceased in respect of some of the properties of the said deceased. In paragraph (7) of the said deceased, the said Ms.Nigar Sultana Abdul Hakim has apprehended that the petitioner is not ready and willing to give the share of the applicant in the property of the said deceased mother. In my view, in view of the undertaking rendered by the learned counsel for the petitioner to give legitimate share of the said Ms.Nigar Sultana Abdul Hakim in the immoveable properties of the said deceased, the apprehension of the said Ms.Nigar Sultana Abdul Hakim is taken care of.

7. Insofar as other submissions which are made in the affidavit are concerned, in my view the same are not relevant for the purpose of granting succession certificate.

8. I, therefore, pass the following order :-

- (a) Testamentary Petition No.740 of 2011 is made absolute in terms of prayer clause (a).
- (b) The petitioner is directed to pay 1/6th share from the amounts realized from the banks in respect of the amounts lying in the name of the said deceased with Canara Bank as well as Punjab National Bank described at Ex.B to the petition to the said Ms.Nigar Sultana Abdul Hakim within one week from the date of realizing the amount from those banks with interest.
- (c) It is made clear that this court has not gone into the correctness of the allegations made by Ms.Nigar Sultana Abdul Hakim in her affidavit in reply dated 16th December,2011.
- (d) The office is directed to issue succession certificate in favour of the petitioner expeditiously.
- (e) Canara Bank, Mumbai King Circle Branch, Matunga (E), Mumbai and Punjab National Bank, Chembur Branch, Mumbai to act on the authenticated copy of this order.
- (g) The petitioner is directed to convey this order to

the said Ms.Nigar Sultana Abdul Hakim within one week from today.

(h) No order as to costs.

[R.D. DHANUKA, J.]