

Anjali T.
Aswale

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

MISCELLANEOUS PETITION NO.41 OF 2020

Raja Dasan @ R. Dasan

... Deceased

Malathi Dasan

... Petitioner

Mr.S.U. Lakdawala, for the Petitioner.

CORAM: B.P. COLABAWALLA J.

(Through Video Conference)

DATE : 28th SEPTEMBER, 2020

P.C.:

1. The above Petition has been filed seeking a Legal Heirship Certificate under Section 2 of the Bombay Regulation VIII of 1827, in respect of the deceased Raja Dasan @ R. Dasan, a Hindu, Indian Inhabitant of Mumbai. The deceased expired on 31st December, 2007. A copy of his death certificate is annexed at Exhibit 'A' to the Petition.

2. On 9th September, 2020 when the matter came up, I had requested the Petitioner's advocate to address this court on whether delay can be condoned, and therefore, the matter was stood over to 16th September, 2020.

3. On 16th September, 2020, the learned advocate brought to my attention Rule 382 of the Bombay High Court (Original Sides) Rules,

1980, which states that where an application for probate or letters of administration or succession certificate is made for the first time after the lapse of three years from the death of the deceased, the reason for the delay shall be explained in the Petition. Relying upon this Provision, the learned advocate submitted that the Court has the power to condone the delay. Being satisfied with this argument, I thereafter proceeded to peruse the Petition. The explanation given in the Petition for the delay was wholly unsatisfactory. It is, in these circumstances, instead of rejecting the Petition on this ground, I gave an opportunity to the Petitioner to explain the delay by filing a further affidavit.

4. Accordingly, the Petitioner has filed an affidavit dated 18th September, 2020. On going through the affidavit, I find that the Petitioner has sufficiently explained the delay and hence I have heard the learned advocate for the Petitioner on merits.

5. From the Petition, it is pointed out that the deceased was survived by his widow, daughter and son, as more particularly set out in paragraph 4 of the Petition. The reason for seeking a Legal Heirship Certificate is mentioned in paragraph 5 of the Petition, namely, that it is required for having the property belonging to the deceased transferred in the name of heirs. All the heirs have consented.

6. No other petition for a heirship certificate, succession certificate, probate or letters of administration with or without will annexed, has been filed. In these circumstances, I find that there is no impediment to grant the reliefs.

7. In these circumstances, the Petition is made absolute in terms of prayer clauses (a) and (b), which read thus :-

“(a) That delay be condone in filing of Petition;

(b) That a Legal Heirship Certificate certifying that the Petitioner along with the heirs mentioned herein at Para 4 above are the only heirs and legal representative of the said deceased under the Provision of Bombay Regulation Act VIII of 1827 may be granted.”

8. Proclamation is dispensed with. The above Petition is accordingly disposed of. No order as to costs.

9. This order shall be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned shall act on production by fax or e-mail of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)