

Sharayu Khot.

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

MISCELLANEOUS PETITION NO. 64 OF 2022

Claudius D'Souza

...Petitioner

And

Smt. Julie Ligoury D'Souza

...Missing Person

Mr. Himanshu Kode a/w Ms. Janhavi Karnik for the Petitioner.

CORAM : R.I. CHAGLA J

DATE : 21 October 2022

ORDER :

1. Heard learned Counsel for the Petitioner.
2. By the present Petition, the Petitioner is seeking declaration and order of presumption of death of Smt. Julie Ligoury D'Souza, missing person having been missing from 11th September 2012 from Flat No. 405, 4th floor, B-Wing, Florence Building, Village Dahisar, Taluka Borivali, Bombay Suburban, Mumbai 400 068.
3. The Petitioner has stated that missing complaint have

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been lodged by the Petitioner with the MHB Colony Police Station on 12th September 2012, which has been recorded under Sr.No. AMR 66/2012 dated 12th September 2012. A copy of the certificate dated 12th September 2012 issued by the Senior Police Inspector of MHB Colony Police Station is annexed at Exh.A to the Petition.

4. Thereafter, the Petitioner had addressed a letter dated 2nd October 2012 to the Joint Commissioner of Police requesting to include particulars about the missing person and photograph on television announcements in the category of missing person along with important contact numbers. Letter is annexed at Exh.B to the Petition and Exh.B1 is photograph to be published of the missing person on television along with important contact numbers of the missing person.

5. The Petitioner has stated that on 4th October 2012, the concerned police station informed the office of Crime Branch requesting to process the application of the Petitioner and published the information of missing person on television. The letter dated 4th October 2012 issued by Senior Police Inspector attached to MHB Colony, Mumbai is annexed at Exh.C to the Petition. Thereafter, letter

of the Petitioner was processed by the department of police and on 5th October 2012 certificate was issued giving descriptive details of the missing persons to be published on television with photograph. The registration certificate dated 5th October 2012 issued by the Senior Police Inspector of missing person department from Crime Branch, Mumbai is at Exh.D to the Petition.

6. The Petitioner stated that more than seven years had expired since the person went missing. The concerned police station issued certificate on 21st January 2020 stating that the missing person is still missing. The Petitioner has stated that the said Smt. Julie Ligoury D'Souza, missing person was 70 years of age as on 11th September 2012, when she went missing. Missing person had neither returned home nor has been traced by the police station for more than seven years. The diligent search and efforts to trace out the missing person, were unsuccessful. The missing person was survived by the legal heirs and next of kin whose particulars are given in tabular form at paragraph 9 of the Petition.

7. The Petitioner has stated that the parents of the missing person had predeceased the missing person. The husband of missing

person had also expired on 16th July 2006 prior to Smt. Julie Ligoury D'Souza going missing.

8. Save and except the legal heirs mentioned in the tabular form at paragraph 9 of the Petition, there are no other legal heirs of the deceased.

9. The other legal heirs of the deceased have filed their Consent Affidavits dated 16th November 2021 and 27th October 2021 giving their full and free consent to the presumption of death of the missing person Smt. Julie Ligoury D'Souza without service of proclamation/notice upon them.

10. I have considered the averments in the Petition as well as noted the fact that Smt. Julie Ligoury D'Souza went missing from the aforementioned premises on 11th September 2012 as well as the fact that the concerned police station has issued certificate on 12th September 2012 and on 21st January 2020 stating that the missing person is still missing. Considering that the missing person has gone missing from more than seven years, under the provision of Section 108 of the Indian Evidence Act, 1872, there is presumption of death.

11. Further it is noted that the other legal heirs of the missing person have filed their consent Affidavits as aforementioned and thus, there is no impediment to the grant of relief sought for in the Petition. Hence the following order :-

(i) It is ordered and declared that Smt. Julie Ligoury D'Souza as missing person having been missing from Flat No. 405, 4th floor, B-Wing, Florence Building, Village Dahisar, Taluka Borivali, Bombay Suburban, Mumbai 400 068, is presumed to be dead under the provision of Section 108 of the Indian Evidence Act, 1872.

(ii) The Petition is allowed and disposed of accordingly.

[R.I. CHAGLA J.]