

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

INTERIM APPLICATION NO. 882 OF 2022
IN
TESTAMENTARY PETITION NO. 1380 OF 2022

Gyansingh Jagatsingh Negi ...Deceased

Padma Gyansingh Negi & Anr. ...Applicants

Adv. J. M. Doshi i/b. Doshi & co. for Applicants/Petitioners.

CORAM : ARIF S. DOCTOR, J.

DATE : 31st JANUARY, 2023

P.C. :

1. The present Interim Application is filed seeking dispensation of justification of surety in respect of the wife of the Deceased Subhadra Gyansingh Negi. It is stated that the said Subhadra Gyansingh Negi renounced since last 10-12 years and has never return home. The Applicant set out that despite diligent search made by the relatives to trace Subhadra Gyansingh Negi they have been unable to do so.

2. The Applicant sets out that their father Mr. Gyansingh Jagatsingh Negi was seized and possessed off the residential premises being Unit no C-3, admeasuring 30 sq. mtrs. Approx., comprised on ground plus one upper floor, standing on all that plot land bearing Plot No. 512, situated at Sector 5, Charkop Market, Kandivali (West), Mumbai. The Applicant had filed the Petition for Letters of Administration without will in respect of the properties and credits of the deceased at the time of his death. He submits that all the legal heirs of the deceased had give their respective consent affidavits to the petitioners and accordingly the Applicants are entitled to grant of Letter of Administration without will annexed.

2. Learned Counsel points out as per the provisions of the Hindu Succession Act, 1956 their mother Subhadra Negi would be entitled of 20% undivided share right title and interest in the estate of the deceased. He submits that in the circumstances set out in the petition the Applicant would not be in a position to justify the surety of the mothers share.

3. Learned Counsel invites my attention to Bombay High Court Original Side Rule 422 (b) and points out which reads thus:

“(b) When the person to whom the grant of letter of administration or succession certificate is made is entitled to a portion only of the estate, the surety to the bond shall justify for the whole estate less the share of the grantee and of such sharers as shall consent in writing thereto.”

4. He submits that the Applicant shall furnish an indemnity and upon to the

satisfaction of the Testamentary Registrar in respect of the 20% share of the mother of the Applicant. He thus, seeks that the justification of surety be dispensed with.

5. I have heard learned Counsel perused the copy of the Interim Application and find that the same is in order. In view of the fact that the Applicant is now willing to furnish indemnity and give undertaking to the satisfaction of the testamentary registrar in respect of the 20% share of Subhadra Negi. The Interim Application is allowed in term of prayer clause (a) which reads as under:

(a) this Hon'ble Court be pleased to dispense with the justification of surety under Rule 422 (b) of the Bombay High Court (O.S.) Rules.

6. It is made clear that the office to proceed only after the indemnity and undertaking to the satisfaction of the Testamentary Registrar is furnished.

(ARIF S. DOCTOR, J)