

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 9th August, 2024**

CALLED FOR COMPLIANCE :

40 TP/2361/2024) Mr. B. G. Saraf a/w. Suyash Kalbhor, Advocate for
) petitioner
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) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner for the Letters of
) Administration (De- Bonis Non) with Will annexed
) being legal representative of the one of the beneficiaries
) named under the Will executed by testator namely
) Ardeshir Jijibhai Divecha. Testator has appointed Freny
) Jijibhai Divecha and Sohrab Jijibhai Divecha being
) Executors / Executrix under the Will. Said Executor /
) Executrix had applied to this Hon'ble Court for petition
) for Probate of the last Will and testament of the testator
) abovementioned in Testamentary Petition No. 96 of
) 1976. This Hon'ble Court was pleased to grant Probate
) in favour the Executor / Executrix having effect
) throughout the India on 30.08.1977. Copy of the
) Probate is annexed to the petition as Exhibit – "C".
) After obtaining Probate, the said Executor / Executrix
) during their lifetime did not administered the estate of
) the testator in favour of the beneficiaries. They died
) without final distribution of the estate to heirs as per the
) provisions of the Will. The Executrix namely Freny J.
) Divecha died on 02.08.1981 and her death certificate is
) annexed to the petition at Exhibit "C1". Other Executor
) namely Sohrab J. Divecha also died on 11.03.1995 and
) his death certificate is annexed to the petition at Exhibit
) "C-2".
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) 2. Ld. Advocate for petitioner submits that the items
) shown in Schedule I to the petition No. 96 of 1976 and
) which have remained to be administered / transmitted
) are shown in Part I of the Schedule I to the petition,
) which has been annexed to the petition as Exhibit –
) "D". Ld. Advocate for the Petitioner submits that item
) shown in the Schedule-I of that Probate remained to be
) administered, as the above Executor / Executrix2

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40 TP/2361/2024

) died without administering the properties. Also,
) beneficiaries named under the last Will of testator has
) not administered the properties belongs to the testator
) as shown in Schedule I to the petition. Hence, petitioner
) is legal representative of one of the beneficiaries named
) under the Will dated 25.09.1993 of Sohrab J. Divecha
) who is one of the Executor and beneficiary in the Will
) of the testator. Hence, Ld. Advocate for petitioner
) submits that petitioner herein is proper person to apply
) for Letters of Administration (De Bonis Non) for the
) Will annexed for the un-administered estate of the
) testator. He further submits that the Petition filed to
) Probate will and testatment of Sohrab J. Divecha was
) filed by Adi Keki Motafram – petitioner herein having
) Testamentary Petition No. 2237 of 2024.

) 3. Said testator said to have died on 30.08.1973 at
) Mumbai. Petitioner filed the copy of death certificate
) (which is annexed to petition as Exhibit-A), photocopy
) of Probate issued by this Hon'ble Court in
) Testamentary Petition No. 96 of 1976, petitioner's oath
) and Affidavit of the legal representatives of the
) beneficiaries.

) 4. Petitioner stated that the testator left behind his last
) Will and Testament which was duly executed at
) Mumbai on 23.05.1973, in Gujarati language. Ld.
) Advocate for petitioner submits that the original Will is
) handed in separately for being filed and kept in a safe
) place in the Office of the Prothonotary and Senior
) Master, High Court, Bombay in Testamentary Petition
) No. 96 of 1976.

) 5. Petitioner states that parents of testator were
) predeceased to him and testator was survived by legal
) heirs shown in the paragraph No. 6 of the petition, as
) per the provisions of the Indian Succession Act, 1925
) applicable to Parsi. Testator has one brother namely
) Sorab J. Divecha and one sister namely Frenny Divehca,
) both of them died as bachelor and spinster respectively.
) Legal heirs shown in para No. 6 of the petition are
) cousin sister of the testator (father's brother daughter)
) and her son namely

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9. Furthermore, Ld. Advocate for petitioner submits that he has filed Administrator's Oath of the petitioner and undertakes that he will faithfully administered the property and credits of the testator and in any way concerning his Will by paying first his debts and then the legacies therein bequeathed so far as the said assets and file inventory of the said assets. Petitioner has undertaken to faithfully administer the properties which was remained to be administer as per the Will of testator. Hence, Letters of Administration (De-Bonis Non) with Will annexed being legal representative of one of the beneficiaries should be granted to the petitioner.

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ORDER

- 1) Petition is granted.
- 2) Office to issue Letters of Administration (De Bonis Non) with Will annexed as per the provisions of the Indian Succession Act, 1925 to the petitioner and upon satisfaction that the administration Bond is properly executed, as per the Rules.
- 3) Before issuance of above said Letters of Administration with Will, the office to verify that there is no cross Petition is pending or caveat is filed. Office to act accordingly.

09.08.2024

FIRST ASSISTANT MASTER