

**BEFORE : MRS. R. V. RANE
COMPANY REGISTRAR /
TESTAMENTARY REGISTRAR
DATE : 29th April'2024.**

Sr No. - 35 – TP 230 of 2024

Mr. Rahul Karnik, Advocate for petitioner

Called for direction

1. Perused the Petition. Heard Advocate for petitioner. Advocate for petitioner submits that the present petition is for Succession Certificate in respect of certain **Securities** belonging to the deceased viz. Francis Elogues Fernandes who died at Mumbai on **20.04.2018**. Copy of death certificate is annexed at Exhibit -'A' to the petition. Copy of the identification proof of the deceased is annexed at Exhibit "B" to the petition.

2. Advocate for petitioner submits that the said deceased ordinarily resided at Flat no. 102, Bindra Daffodil, Bindra Complex, Mahakali Caves, Andheri East, Mumbai 400093

3. Advocate for petitioner submits that, the said deceased died intestate and that due and diligent search has been made for the Will but none has been found.

4. Advocate for petitioner submits that the legal heirs left behind by the deceased surviving as **his** only heirs next-of-kin according to **Indian Succession Act, 1925** are mentioned in para no. 4 of the said petition.

5. Advocate for petitioner submits that the deceased left behind him mother, wife and son viz. Claudina Fernandes (mother of the deceased), Anita Fernandes (wife of the deceased) and Ansel Fernandes (son of the deceased). Save and except there are no other legal heirs and next of kind left by the deceased, which is mentioned at para no. 4 of the petition.

Advocate for petitioner submits that Claudina Fernandes and Ansel Fernandes (through mother as a natural guardian) had given their **consent for issuance of succession certificate in favour** of Anita Fernandes. The consent affidavits are annexed as **page no. 19 to 23**.

Pursuant to the order dated 6.04.2021 (Coram : G. S. Patel, J.) in TP No. 1701 of 2017 the Hon'ble Court passed an order that "in all matters where a birth parent seeks such Letters of Administration or a succession certificate, the Registry is not entitled to demand surety justifying the birth minor's share in the property or estate in question. Such a demand can only be made where the petitioner is not the birth parent and natural guardian of the minor".

Hence, Anita Fernandes is natural guardian of Ansel Fernandes (son of the deceased). Hence the share of Ansel Fernandes not to be deposited in the Hon'ble Court.

6. Advocate for Petitioner submits that being the **widow** of deceased claims to be entitled for **1/3rd** share in the estate left by the deceased.

7. Advocate for petitioner submits that, there is no impediment under Section 370 of the Indian Succession Act, 1925 or under any other provision of this Act or any other enactment to the grant of the certificate of the validity thereof if it was granted.

8. Advocate for petitioner submits that no application has been made to any District Court or District Delegate or to any High Court for probate of any Will of the said deceased or for letters of administration with or without the Will for annexed to their property and credits.

9. Advocate for petitioner submits that no application has been made to any District Court for Succession Certificate in respect of any debt or security belonging to the estate of the deceased.

10. Advocate for the petitioner submits that there is delay of filing this petition be condoned as the concerned authorities asked for legal representation to transfer the property in favour of the Legal heirs. In view thereof, delay is condoned.

11. Advocate for the petitioner submits that the General Notice was issued on **29.01.2024** in the aforesaid matter. Advocate for the petitioner submits that Affidavit of Service dated **21.03.2024** for proving General Notice filed through

e-filing and Administration Bond dated **18.04.2024** also filed through e-filing.

12. This petition is filed for grant of Succession Certificate in respect to the **securities** which was mentioned in Schedule-1 which is annexed to the petition. The petitioner has complied all the necessary compliance for grant of the Succession Certificate in favor of the petitioner. Hence, facts stated by petitioner, on oath, remained unchallenged and required to be accepted. Accordingly, petition deserves to be allowed, as prayed for. Hence, following order :

ORDER

1) Petition is allowed and the Succession Certificate be granted to the petitioner for certain **securities** left by the deceased and shown in the schedule, in prescribed format. **Grant to be expedited since one of the legal heir is 84 years old.**

2) Before issuance of the grant, the office to verify whether any cross Petition is pending or Affidavit resisting the petition is filed.

3) The petitioner to file an account as undertaken in the Administration Bond within stipulated period. Necessary endorsement be made on the Administration Bond, subject to satisfaction of the Department.

ksa/rvr

**COMPANY REGISTRAR/
TESTAMENTARY REGISTRAR**