

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :-06th May, 2024

FOR COMPLIANCE:

59. TP/753/2024 P.C.: Shri. Suyash Kalbhor a/w Shri. M. B. Saraf i/b B G Saraf Ld.
[Original]
(ECHCBM0223095
2023)

Advocate for the Petitioner

1. The petitioner is the widow of the deceased. The mother of the deceased is one of the legal heir. However, mother of the deceased is unable to give her consent due to her inability. Ld. Advocate for the petitioner submitted that the Hon'ble High Court, in Guardian Petition, having (L) No. 34409/2023, has allowed the father of the deceased to file the consent on behalf of the mother of the deceased in testamentary proceeding. Accordingly, the father of the deceased has filed consent on behalf the mother of the deceased.

2. In this regard, Rule 422 of Bombay High Court (O. S.) Rules, 1980 is relevant, which reads as under:

“422. Surety to be justified in certain cases – (a) In the following cases the surety to the bond shall justify for the whole amount of the estate – (i) When the person to whom the grant is made has taken out letters of administration or succession certificate for the use and benefit of a lunatic or person of unsound mind, unless he be a committee of the estate of such lunatic appointed by the Court and as given security.”

3. As per the said provision, the petitioner is not the guardian of the mother of the deceased. Hence, the petitioner to comply the said provision to justify the surety in respect of the share of mother of the deceased. Hence, adjourned.

2. S. O. to 09.05.2024, if time permits.

06.05.2024

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