

**Before :Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date 19th July, 2024**

FOR COMPLIANCE:

26.TP/1097/2024 P. Shri. A S Pagedar Ld. Advocate for the Petitioner
[Original] C. :

(ECHCBM020301
72024)

1) This is a petition for grant of Letters of Administration, under the Provisions of Indian Succession Act, 1925 (for short "IS Act") for the properties left by the deceased, namely Mamuna Tyab alias Mamuna Abdul Tyab Officewala alias Mamuna A. Tyab Officewala alias Mamuna Mulla Abdul Tyab Officewala alias Mamuna Abdul Tyab alias Memuna Tyab Officewala alias Memuna Tyuab Officewala alias Memy Tyab, alias Memy Abdul Tyab (For short "Said deceased"). The petitioner, namely Aliasgar Ibrahim Sanchawala alias Aliasgar Ibrahim Bardanwala, has filed documents such as true copy of the death certificate of the deceased, affidavit with document to dispense with requisition of identity proof of the deceased, oath in the prescribed format, affidavit of service citation.

2) I have heard Ld. Advocate and perused the petition along with the documents. Ld. Advocate for the Petitioner submitted that he has uploaded administration bond online having document no. EDHCBM02337862024.

3) Said deceased died as a spinster on 01/01/2021 at Flat 159, Taplow, Adelaide Road, London, NW3 3NU U.K. leaving behind her legal heirs, shown in the paragraph No. 4 of the petition. Petitioner states that there are no other legal heirs to the deceased, except heirs shown in the petition. Deceased left properties shown in the schedule.

4) Citation was issued, which has been duly affixed on the conspicuous part of the Hon'ble High Court and notice board of the Collector's Office at Mumbai and 14 days have been expired vide Rule 397(1) and (4) of the Bombay High

Court (O.S.) Rules, 1980(for short “BHC Rules”) and an affidavit to that effect has been filed. Notice to collector has been issued vide Rule 396 of BHC Rules. Till today, no one appeared to resist the claim of the petitioner or nothing is brought to the notice regarding pending litigation pertaining to the same properties. Hence, the petition is treated as uncontested one.

5) Legal heirs of the deceased have consented by way of Affidavits to grant prayer of petitioner to grant a Letters of Administration, without reserving any right. They have accepted the facts, regarding their relationship, inter-se.

6) Petitioner has filed the administration Bond in prescribed form No. 118 with surety.

7) Ld. Advocate for the petitioner is relied upon the provisions in the book, namely Compendium of Fatimid Law (Section 423- page No. 104, Section 417- page no. 102, Note to Section 421- page no. 104) are reproduced as under;

Section 417 FULL/CONSANGUINE BROTHER AND SISTER.

(i) When there are no children, no parents and no brother, the sister takes the whole estate unless there is the grandfather, who stands in the place of the brother.

(ii) Two full sisters get 2/3 of the estate. If there are brothers and sisters, the brother gets twice the share of the sister.

Section 421 UTERINE BROTHER, UTERINE SISTER, CONSANGUINE BROTHER, CONSANGUINE SISTER AND FULL SISTER.

Uterine brother and sister = 1/3, to be divided equally between them, brother and sister taking alike.

This is a Koranic provision and is an exception to the general rule of the double share to the male.

Full sister, 1/2 as Koranic heir, and the residue 1/6 as a blood-relation (bi'l-rahm); therefore, 2/3.

The consanguine brother and sister are excluded by the full sister (DM, 1347).

Note: the full, consanguine and uterine brothers and sisters are entirely excluded by the father, the mother, the son and the daughter, they inherit only in the absence of the parents and the children.

Section 423 PATERNAL GRANDFATHER AND FULL (OR CONSANGUINE) BROTHER (OR HIS SONS).

The paternal grandfather gets 1/2; and the brother, full and failing him, the consanguine, shares equally and gets the residue 1/2. The brother's son stands in the shoes of his father, if the father has predeceased him.

Brother's son, Paternal Grandfather.

"The brother's son and the paternal grandfather are of equal priority, and they inherit in equal proportions" (DM, 1349-50).

In view of the above provisions the particulars of legal heirs of the deceased are acceptable and accordingly accepted.

8) Ld. Advocate for the petitioner submitted that in view of provisions of Muslim person Laws applicable to Shia-Dawoodi-Bohara Muslim, the petitioner, being nephew of the deceased, is entitled to seek a Letters of Administration. Hence, facts stated by petitioner and heirs of the deceased, 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 Letters of Administration be granted to the petitioner for properties, left by the deceased and shown in the schedule, in prescribed format as per the provisions of the Indian Succession Act, 1925.
2. Before issuance of the grant, the office to verify that there is no cross Petition is pending or caveat resisting the petition is filed.
3. The petitioner to file an account as under taken in a Petitioner's Oath within stipulated period. Necessary endorsement be made on the administration Bond, subject to satisfaction of the Department.

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