

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 16th August, 2024

FOR COMPLIANCE :

73. TP/2075/2024
[Original]
(ECHCBM02109702023)

P. C. : Shri. Sumeet Jalgaonkar Ld. Advocate for the
Petitioner

1. Perused Petition. Heard Ld. Advocate for the petitioner and have gone through the decision of the Hon'ble Bombay High Court in case of Hirjibhoy Rustomji Patel Vs. The State of Bombay in Appeal no. 115 of 1952 (1952 SCC OnLine Bom 106 : ILR 1953 Bom 748 : (1953) 55 Bom LR 122 : AIR 1953 Bom 228). Ld. Advocate for the petitioner submitted that in the cited case, the deceased was Parsi, who died unmarried leaving behind his widowed mother. Said mother had obtained letters of administration for the properties of the deceased. However, before she could administer the estate, she died leaving behind her son (a brother of the deceased). The said brother applied for letters of Administration, de-bonis-non vide sec. 259 of the Indian Succession Act, 1925 (for short "IS Act"). Similar issue was raised and the Hon'ble High Court has laid down that;

"One Rattanshaw died on October 9, 1950 ??? left behind him his mother Meherbai and a brother who is the appellant before us. He also left children of a pre- deceased brother and a pre-deceased sister. On May 2, 1951, Meherbai applied for letters of administration to the estate of Rattanshaw and letters were granted to her. Meherbai died on December 6, 1951, and it is common ground that when Meherbai died the estate of Rattanshaw was not fully administered. Thereupon the appellant applied for letters of administration de bonis non to the estate of Rattanshaw. This application was rejected by the learned Judge below on the ground that the appellant should have applied for letters of administration to the estate of Meherbai, his mother, and not to the estate of his brother Rattanshaw, and the ground on which the learned Judge based his rejection was that Meherbai

was the sole heir of Rattanshaw and as such she became entitled to the estate of Rattanshaw and therefore letters of administration should have been sought to the estate of Meherbai and not Rattanshaw .”

2. The Court held that, “In our opinion he is entitled to letters of administration to the estate of Rattanshaw because he is one of those persons to whom original grant could have been given, because if the mother was not would have been the next in line of succession under Law of succession, and he would have been entitled to letters of administration to the estate of Rattanshaw. It is also difficult to understand why at this stage the appellant is bound to pay duty over again on the estate of his brother in respect of which duty was already paid by Meherbai when she applied for letters of administration.”

3. Similarly, ratio laid down in the above referred case is applicable to the matter in hand. Hence, issue Citation within two weeks from today. Issue Notice to the Collector as per **Rule 396** of the Bombay High Court (O. S.) Rules, 1980. Issue citation to the non-consenting legal heirs of the deceased, if any. Advocate is directed to take steps and ensure that requisition under chapter XXVI of the Bombay High Court (O. S.) Rules, 1980 (for short “BHC Rules”) are complied with.

4. Advocate to take steps regarding Service of General Citation as per **Rule 397** of the BHC Rules and also effect service upon non- consenting legal heirs, if any, as per Rules **399 and 400** of the BHC Rules and also justify the surety of non-consenting legal heirs, if any, and furnish Administration Bond, for **Gross amount**, vide **Rule 420** of BHC Rules,

within one week thereafter, if there are other legal heirs including the petitioner.

5. Office to verify if any cross petition is filed, if cross petition file, then take steps to place before the Hon'ble Court under **Rule 407** of BHC Rules.

6. S. O. 08.10.2024

16.08.2024

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