

Before: Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date: 01st October, 2025

FOR COMPLIANCE:

96. TP/156/2025 P. C. : Shri. P R Chaurasia Ld. Advocate for the
(AMH20230038220C Petitioner
202400009)
with
WILL/63/2025

1) This petition is filed by the petitioner, being one of the beneficiaries under the Will executed by Rajwantsingh Pritamsingh Kalsi, alias Rajwant Singh Pritam Singh Kalsi (herein after the same is referred to as “Testator”), for the grant of a Letters of Administration with Will annexed. Said Testator said to have died at Mumbai on 19/12/2020. Petitioner, namely Vijay Pal Rajwant Singh Kalsi, filed the copy of the death certificate, identity proof of the testator, the Will and the petitioner's oath.

2) Perused the petition. Heard Ld. Advocate for the petitioner. I perused documents.

3) The petitioner has explained the delay vide Rule 382 of the Bombay High Court (Original Side) Rule, 1980(for short “Rules”).

4) In a Will, properties were bequeathed to Kuljeetkaur Rajwantsingh Kalsi, the wife of the deceased, vide paragraph No. 4 of the Will. In the next paragraph, it is provided that after the death of Kuljeetkaur Rajwantsingh Kalsi, the properties would go to the petitioner.

5) I Heard Ld. Advocate for the petitioner on the point of Sections 105 to 107 of the Indian Succession Act, 1925.

6) The learned advocate for the petitioner has relied upon the decision of the Hon’ble Punjab and Haryana High Court in the case of **Karnail Singh and another V/s Mohinder Kaur and Others(AIR 2003 Punjab & Haryana 135)**. In this case, Section. Section 109 of the IS Act has been discussed. In paragraphs No. 11 to 14 of the

Judgment, the Hon'ble Court has laid down the meaning of the terms "Lineal Descendant".

7) The learned advocate for the petitioner has relied upon the decision of the Hon'ble Bombay High Court in the case of **Smt Bhagirathibai and another V/s Lalchand Baram and others (AIR 1975 Bombay 301)**. In this case, the testator has bequeathed the property to his widow to the extent of collection of money, enjoyment of income from the property, etc. and after the death of the widow, Bhagirathibai, it would go to Rupchand. Hence, it is laid down that vide Sec. 119 of the IS Act, property is vested in favour of Rupchand.

8) Ld. advocate for the petitioner has relied upon the decision of the Hon'ble Court in the case of **Krishandas Tulsidas and another v/s Dwarkadas Kaliandas and Others (AIR 1936 Bombay 459)**. In this case, the Hon'ble Court has exercised the power to interpret the clause in the Will with reference to Sec 109 of the IS Act.

9) The learned advocate for the petitioner has relied upon the decision of the Hon'ble Court in the case of **Smt Rekha Narayan Marotkar & Ors V/s Rambhau Bandu Khadgi & Ors (AIR 2007 Bombay 135)**. Later on, he submitted that he is not relying on the ratio laid down in the case of Rekha Marotkar(cited supra). The fact of this cited Case is not similar to the facts of the petition.

10) Ld. advocate for the petitioner has relied upon the decision of the Hon'ble Allahabad High Court in the case of **Smt. Gita Devi V/s Smt. Muder Devi (AIR 1980 Allahabad 372)**. In this case, the hon'ble Court interpreted the provision of Sec 109 of the IS Act and held that vide this provision, the predeceased daughter's son is entitled to the estate bequeathed to the daughter, though she died before the testator's death.

11) The learned advocate for the petitioner has relied upon the decision of the Hon'ble

Supreme Court in the case of **S. Jhansi Lakshmi Bai and others V/s Pothana Appa Rao and Others (AIR 1969 Supreme Court 1355)**. In this case, the Hon'ble Supreme Court has laid down that

“11. We are concerned to construe the provisions of Section 105 of the Indian Succession Act. That section enacts that a legacy shall lapse and form part of the residue of the testator's property if the legatee does not survive the testator except where it appears by the will that the testator intended that the legacy shall on the legatee not surviving him go to some other person. We are unable to agree that the intention of the testator that a legacy shall not lapse may be given effect to only if the testator expressly directs that if the legatee dies during his life time the legacy shall go to some other person, and that intention to exclude lapse cannot be inferred. Section 105(1) does not say, nor does it imply, that the testator must have expressly envisaged the possibility of lapse in consequence of the legatee dying during his life time and must have made a provision for that contingency.

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13. This rule was applied in Dunstan v. Dunstan [(1918) 2 Ch 304]. A testatrix by her will gave freeholds absolutely to A, subject to the bequest that whatever out of the freeholds should remain after A's death shall be given to a named charity. It was held that if A had survived the testatrix the gift to the charity would have been repugnant and void, and A would have taken the freeholds absolutely. But since A died in the life time of the testatrix, the doctrine of repugnancy did not apply, and the gift to

charity was accelerated and took effect.”

12) Hence, this ratio applies to the case in hand, as there is a provision that in case of the death of Kuljeetkaur Rajwantsingh Kalsi, the property would go to the petitioner. Hence, the petition is taken up for further order.

13) No executor has been appointed under the Will. The petitioner is one of the legatees under the Will. Hence, the petition is tenable.

14) Petitioner stated that the deceased left behind his last will, which was duly executed at Mumbai on 21.02.2018, and registered with the office of the Sub-Registrar's Office. Will's language is English. The 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.

15) Ld. Advocate for the petitioner submits that the testator is survived by legal heirs, whose details are given in the petition's paragraph No. 08, as per the provisions of the Hindu Succession Act, 1956. The petitioner affirmed that there are no other legal heirs of the deceased, except as mentioned in the petition. The legal heir of the testator has consented to the petition and thereby waived the service of Citation.

16) 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 the collector has been issued vide Rule 396 of the BHC Rules. Till today, no one has appeared to resist the claim of the petitioner, nor has anything been brought to the notice regarding pending litigation about the same properties. Hence, the petition is treated as an uncontested one.

17) The petitioner has filed the affidavit of

Kiran Shivaji Hadawale, one of the attesting Witnesses to the Will, in form No.102 of the Bombay High Court (Original Side) Rules, 1980. He deposed that the deceased signed the Testament in his presence. Hence, enough evidence is on record to accept the execution of the Will, and the petitioner has succeeded in proving the execution of the Will.

18) Properties mentioned in Schedule I of the petition are referred to in the Will.

19) The other legatee, namely Sharabjeet Kaur Surjit Singh Kundra, has given consent to grant Letters of Administration to the petitioner.

20) Petitioner has executed the administration Bond in the prescribed format. Hence, following the order:

ORDER

1. Petition is granted.
2. Office to issue Letters of Administration with Will annexed to the petitioner, as per the Rules, having effect throughout the State of Maharashtra.
3. Before issuance of Letters of Administration with Will, the office to verify that there is no cross-petition pending or caveat filed. Office to act accordingly.

01st October, 2025

**Officer on Special Duty,
with Testamentary Department**