

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 30th July, 2025

FOR COMPLIANCE :

67. TP/2209/2025 P. C. : Shri. Gaurang Samel i/b Wadia Ghandy & Co. Ld.
[Original] Advocate for the Petitioner
(ECHCBM02114792
024)

1. Heard Ld. Advocate for the petitioner. He submitted that as per Rule 371 of Bombay High Court (O.S.) Rules, 1980, this officer has power to dispensed with the requisition raised in the petition, which is raised as to capacity of the petitioner to present the petition, which has been raised by this officer.

2. In cited case the Hon'ble Court has passed in case of **Devshi Narayan Makwana Vs. Jagdish Hirji Makwana** Testamentary Petition Nos. **TP/2393/2023** dated **04.11.2023**, in case of **Jamnabai Harjibhai Hodar @ Jamnaben Harji Hodar @ J. H. Hadar Vs. Kiran Damodar Hodar** in **TP(L)213/2019** dated **05.10.2020** & in case of **Acchut Sahdev Patade alias Acchut Sahadeo Patade Vs. Upendra Sahadeo Patade alias Upendra Sahadev Patade** in **TP(L)/31077/2024**. He submitted as the Hon'ble Court has allowed the class-II legal heirs of the deceased to present the petition, this officer has power to pass such order, which the Hon'ble Court can pass. Ld. Advocate for the petitioner submits that all the legal heirs have filed the consents are annexed at Exhibit-B1 to B-8.

3. However, these orders have been passed by the Hon'ble Court while exercising discretionary powers as per Section 254 of the Indian Succession Act, 1925 and only Hon'ble Court has power to exercise these discretionary powers and not this authority. No doubt, Rule 371 of the Bombay High court (O. S.) Rules, 1980, conferred power of the Prothonotary and Senior Master, High Court Original Side to exercise the power conferred upon the District Judge. However, discretionary powers of the Court can not exercise by the department.

4. Hence, to exercise the discretionary powers conferred under Section 254 of the Indian Succession Act, 1925, the Petitioner to seeks directions from the Hon'ble Court.

5. S. O. to 10.09.2025

30.07.2025

Officer on Special Duty,
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