

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 3663 OF 2024**

Uday Chaturbhuj Merchant

...Petitioner

Sushila Chaturbhuj Merchant

...Deceased

**WITH
INTERIM APPLICATION (L) NO. 6002 OF 2025
IN
TESTAMENTARY PETITION NO. 3663 OF 2024
WITH
WILL NO. 1435 OF 2024
IN
TESTAMENTARY PETITION NO. 3663 OF 2024**

Adv. Akshaan Kanuga i/b Parinam Law Associates for the Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 01ST APRIL, 2025

P.C. :

1. The matter is on board today in view of the following requisitions raised by the Company Registrar / Testamentary Registrar:

“ 1.Perused Petition. Heard Ld. Advocate for petitioner. Upon perusal of the petition, it has been mentioned in para No. 4 of the petition that both the Attesting Witnesses namely Dr. Dari M. Kriplani and M. C. Hemrajani has expired and copies of death certificates of the said are annexed and

marked as Exhibits "C-1" and "C-2" respectively.

2. *Ld. Advocate for petitioner submits that one Mr. Vasudev Hemrajani being son of the Attesting Witness late M. C. Hemrajani, was also present at the time of execution of the Will of the deceased alongwith the Attesting Witnesses. Mr. Vasudev Hemrajani has filed an Affidavit. The said Affidavit of Mr. Vasudev Hemrajani is annexed and marked as Exhibit – "D" to the petition.*
3. *Ld. Advocate for petitioner requires to seek necessary directions from the Hon'ble Court to proceed with the petition since, both the Attesting Witnesses are expired."*

2. However, in view of the order passed by this Court in the case of ***Ramprakash Shreekishindas Aggarwal Vs. Mr. Nandlal Ramprakash Aggarwal & Anr.***¹ This Court had in the aforesaid case in similar facts *inter alia* held as follows:

"2. Rule 384 of the Bombay High Court (Original Side) Rules makes a specific provision for production of the other evidence in the absence of the attesting witness. The same reads as follows:

"384. In absence of attesting witness, other evidence to be produced. – If it is not possible to file an affidavit of any of the attesting witnesses, an affidavit of some other person, if any, who may have been present at the execution of the will shall be filed, but if no affidavit of any such person can be filed, evidence on affidavit shall be produced of that fact and of the handwritings of the deceased and attesting witnesses, and also of any circumstances which may raise a

1 Order dated 23rd February, 2012 in Testamentary Petition No. 50 of 2011

presumption in favour of due execution."

The rules nowhere require the petitioner to seek leave of the court for filing other evidence in the absence of attesting witnesses. Therefore, the office could not have directed the petitioner to the court to obtain leave. It ought to have checked the averments in the petition and accepted the affidavit under Rule 384. Therefore, the papers are returned to the office for accepting the affidavit and proceeding further with the petition. The office shall take note of Rule 384 in future while checking the petitions for probate and not direct the litigants to court."

3. Hence, the requisitions can be heard and dispensed with by the Testamentary Registrar.

(ARIF S. DOCTOR, J.)