IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 3846 OF 2024

Amarlal Daulatram Wadhwa @ Wadhwani ...Petitioner

Versus

Kaushalya Daulatram Wadhwa @ Wadhwani ...Deceased

Mr. Nishant Tripathi a/w Pranav Vaidya i/b M. Tripathi & Co. for the Petitioner.

CORAM : ARIF S. DOCTOR, J.

Date : 05th FEBRUARY 2025

P.C. :

1. The matter was on board seeking dispensation with the following requisition raised by the registry on 7th October 2024.

> *"1) The Petitioner has filed this petition for Letters of Administration with Will (Debonis Non) with Probated Will dated 20.03.2006. The Petitoner herein is a Executor who had renounced his rights in earlier petition [TP/650/2012] to apply for probate by writing dated 29th February, 2012 as stated in para no.5 of the petition.*
>
> *Ld. Advocate for the petitioner to explain how an Executor who has renounced his rights can file this petition as per Section 230 of the Indian Succession Act, 1925.*
>
> *2) Ld. Advocate for the petitioner submits that in this petition*

Consent affidavits of legal heirs of deceased mentioned in para no.10 of the petition is not required to be filed as they have already filed their consent Affidavits in earlier petition [TP/650/2012].

However, as per the Section 259 of the Indian Succession Act, 1925, rules applied to De-bonis non will be as per Original Grants. Hence, Ld. Advocate for the petitioner to file fresh Consent Affidavits of legal heirs of deceased in this petition giving their consents in favour of petitioner herein. Hence, file consent Affidavits of legal heirs who have not filed their consent Affidavits in this petition.

3) Ld. Advocate for the petitioner to take appropriate steps to dispense with a share of non-consenting legal heirs as per para No.7 of the Will."

2. Learned Counsel insofar as first objection is concerned points out that in this Petition, the Petitioner is not approaching this Court in his capacity as an executor but has filed the captioned Petition under the provision of Section 258 of the Indian Succession Act which reads thus:

"Grant of effects unadministered. — If an executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate."

3. He thus submits that the Petitioner is not acting in his capacity of an executor but as in capacity of residuary who would be entitle to maintain the petition before De-bonis-Non.

4. Insofar as the second objection is concerned, learned Counsel points out that since the probate has already been granted and the citations have been served upon all the legal heirs, the same would not be required to be done once again. Learned Counsel has in support of his contention placed reliance upon a decision of this Court dated 8th March 2021 passed in the case of *Hilda Gautam Shah Vs. madhuri Ratilal Shah* and submits that the same was rendered in a very similar fact. He points out that this Court had held that since probate had already been issued what remained was the administration of the reminder of the asset of the deceased i.e. that part which had not been distributed according to the terms of the Will. Hence, the Application for De-bonis-Non. Service of fresh citation was thus dispensed with in the facts of the said case which is what is also pressed for in the present case. Having due regard to this submissions, I find sufficient cause has been shown to dispensed with the said objections.

5. The objections are therefore dispensed with.

6. The office to proceed subject to all necessary compliances which is made by the Petitioner.

(ARIF S. DOCTOR, J.)