

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

FOR COMPLIANCE:

143. TP/4274/2024 P.C. : Shri. Kaustubh Javle Ld. Advocate for the
[Original] Petitioner
(ECHCBM021472620
24)
with
WILL/1700/2024

1) This petition is filed by petitioner, being one of the beneficiaries under the Will executed by Francis John Mascarenhas (herein after the same is referred to as "Testator"), for grant of a Letters of Administration with Will annexed. Said Testator said to have died at Mumbai on 16.12.2013. Petitioners, namely Geraldine Francis Mascarenhas Alias Geraldine Philomena Mascarenhas, filed the copy of death certificate, identity proof of the testator, Will, petitioner's oath.

2) Perused petition. Heard Ld. Advocate for petitioner. 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) No executor has been appointed under the Will. The petitioner is the one of the beneficiary under the Will. Hence, petition is tenable.

5) Petitioner stated that the deceased left behind his last Will and Testament which was duly executed at Mumbai on 24.02.1998, in English language. The original 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.

6) Ld. Advocate for petitioner submits that testator is survived by legal heirs, whose details are given in the petition, as per the provisions of Indian Succession Act, 1925. The petitioner

affirmed that there are no other legal heirs of the deceased, except mentioned in the petition. Legal heir of the testator has consented to the petition and thereby waived the service of Citation. The petitioner states that Sharmine is adopted daughter of the deceased vide a written Adoption Deed. Hence, Ld. advocate for the petitioner has relied upon the decisions of the Hon'ble Court in case of **Manuel Theodore D'Souza petitioners in Guardian Petition No. 74 of 1999 along with Indian Guardianship Petition No. 75 of 1999 (1999 SCC OnLine Bom 690=(2000) 2 Bom CR 244)**. The decision of the Hon'ble Supreme Court in case of **Pharez John Abraham (dead) by Legal Representatives v/s Arul Jothi Sivasubramaniam K. Anad Others {(2020) 13 Supreme Court Cases 711}**. The decision of Hon'ble Keral High Court in case of **Philips Alfred Malvin V/s Y.J. Gonasalvis and Others (1999 SCC Online Ker 5 = AIR 1999 Ker 187)**. The Hon'ble Bombay High Court in case of **Manuel Theodore D'Souza (Cited Supra)**, held that the right to adopt the child is the enforceable Civil Right. Accordingly, detail order has been passed on 17.04.2025. As Sharmine is adopted daughter, she has right at par of natural children. On relying upon these decisions, petitioners' submission is accepted that the legal heirs are mentioned as per Sec. 33 of the IS Act.

7) 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 collector has been issued vide Rule 396 of BHC Rules. Till today, no one appeared to resist the claim of the petitioner or nothing is brought to the notice regarding pending litigation pertaining to the same properties. Hence, the

petition is treated as uncontested one.

8) The petitioner has filed the affidavit of Dr. Mukund Kulkarni one of attesting Witnesses to the Will, in form No.102 of Bombay High Court (Original Side) Rules, 1980. He deposed that deceased signed the Testament in his presence as well as presence of another witness, after going through its contents. Hence, enough evidence is on record to accept the execution of the Will and petitioner is succeeded to prove the execution of Will. According to him all additions and alteration in a Will were existed at the time of execution and before signing the Will. Hence, there is sufficient compliance of the Rule 383 of the Rules.

9) Properties mentioned in the schedule-I of the petition are referred in the Will.

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

ORDER

- 1)** Petition is granted.
- 2)** Office to issue Letters of Administration with Will annexed to the petitioner, upon satisfaction that the administration Bond is properly executed, as per the Rules, throughout the State of Maharashtra.
- 3)** Before issuance of Letters of Administration with Will, the office to verify that there is no cross Petition is pending or caveat is filed. Office to act accordingly.

30th April, 2025

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