

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY PETITION NO. 4275 OF 2024

Roshen Koorshed Kuka .. Deceased

Crystal Feroze De Vitre .. Petitioner

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- Mr. Fredun De Vitre, Senior Advocate a/w Rohan Cama and S.P. Mathkar, Ashish Rebello i/b Rustamji and Ginwala, Advocates for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 08, 2025.

P.C.:

1. Heard Mr. De Vitre, learned Senior Advocate for Petitioner.
2. One Mrs. Roshen Khorshed Kuka (for short "**deceased**") died on 31 August, 2017. The deceased left behind her last Will and Testament dated 11th September, 2006 which is appended to page No. 19 of the Petition. The deceased appointed (1) Homi Fredun DeVitre, (2) Soli Homee Mistry and (3) Anahita Naushir DeVitre as the Executors and Trustees thereof however all three abovenamed Executors and Trustees predeceased the deceased.
3. The deceased was owner of Flat No. 3, 1st Floor, Golf Links No. 1, Union Park, Pali Hill Road, Khar (West), Mumbai - 400 052 (for short "**said flat**") and shares of co-operative Housing Society relating to the said flat, were bequeathed to her nephew late Feroze Eruch De

Vitre and his immediate family members. Feroze Eruch DeVitre died on 23rd August, 2014, leaving behind his wife, Crystal Feroze DeVitre i.e. present Petitioner and his son Eruch Feroze DeVitre as his heirs and legal representatives.

4. Crystal Feroze DeVitre filed for grant of Letters of Administration with the Last Will annexed along Administration Bond dated 28th February, 2025 under Rule 420 of OS Rules with one surety. However, one of the beneficiaries under the deceased's Last Will being Mr. Khushru Soli Mistry did not file his consent affidavit to Petition for grant of Letters of Administration of the estate of deceased.

5. On 02.07.2025, aforementioned Petition was placed before the Officer on Special Duty in Testamentary Department for hearing where he held Mr. Khushru Soli Mistry was "non consenting legatee" under Rule 422(b) of Bombay High Court Original Side Rules 1980 (for short "**OS Rules**").

6. Hence application is made seeking dispensation with justification of surety in respect of non consenting legatee Mr. Khushru Soli Mistry under Rule 422 of OS Rules.

7. Mr. De Vitre, learned Senior Advocate for Petitioner would submit that all the heirs and legal representatives of the deceased named in paragraph No. 9 of the Petition gave their consent to the filing of Petition for Letters of Administration by executing requisite

Consent Affidavits which are appended to the Petition with exception to Mr. Khushru Soli Mistry. He would submit that Mr. Khushru Soli Mistry is the son of Soli Homee Mistry and that widow and daughter of the said Soli Homi Mistry have filed their respective Consent Affidavits for grant of Letters of Administration.

8. He would submit that Mr. Khushru Soli Mistry permanently resides abroad since many years and therefore it is difficult to make contact with him and obtain the requisite affidavit. He would submit that Mr. Khushru Soli Mistry was served with Citation at his known place of address in Bandra (W) since Petitioner has made all efforts to ascertain his overseas address but to no avail. He would submit that Mr. Khushru Soli Mistry has not filed any Caveat in the Petition opposing the grant of Letters of Administration to the Petitioner.

9. I have heard Mr. De Vitre, learned Senior Advocate for Petitioner and with his able assistance and perused the record of the case.

10. It is seen that Office has raised a requirement to justify share of the non consenting legatee under Rule 422 of Bombay High Court Original Side Rules 1980. Petition is filed for Letters of Administration with Will annexed to the property and credits of the deceased.

11. It is seen that as per order dated 02.07.2025 passed by Officer on Special Duty with Testamentary Department, in Clause 7 of

the Last Will, no specific wording has been used for bequeathing the said property. Clause 7 of the Will provides that if the said flat is sold for any reason, the sale proceeds were to be divided equally between the 5 nephews of the deceased. The observation made by Officer on Special Duty with Testamentary Department is therefore contrary to the directions as per Clause 7 of the Last Will allowing the family of late Feroze Eruch DeVitre to use, occupy and reside in the flat of the deceased. Hence, the question of bequest falling into the category of residual property i.e. Clause 8 of the Last Will does not arise.

12. It is seen that family of the late Feroze Eruch DeVitre (being his wife Crystal, the Petitioner and his son Eruch) have been bequeathed the right to use, occupy and reside in the said flat and only if the said flat were to be sold, the sale proceeds would be divided among the 5 nephews of the deceased. Hence Mr. Khushru Soli Mistry being one of the 5 nephews of the deceased getting any share or bequest at present does not arise.

13. It is seen that since Khushru Soli Mistry has not opposed Petition for Letters of Administration filed by Petitioner even after service of Citation, since he is not residing in India since past several years, and that the other heirs of the said Soli Homee Mistry namely his mother and sister have already consented to the grant of the Letters of Administration to the Petitioner. Hence there is no requirement to

justify surety under Rule 422 of OS Rules.

14. In the circumstances, justifying surety of the share of the non consenting legatee by Petitioner does not arise. Justification of surety is therefore dispensed with.

15. Registrar of Testamentary Department is directed to issue the Letters of Administration as directed above to the above to the Petitioner within a period of 3 weeks from today positively.

16. Testamentary Petition is allowed and disposed subject to compliance of office objections, if any, forthwith which shall be allowed by the Department. However, the necessary administration bond of Rs.1,00,00,000/- (Rupees One Crore Only) has already been filed by the Petitioner and one Surety on 25.02.2025 and the same shall suffice as adequate surety.

17. Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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by AJAY
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