

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

TESTAMENTARY PETITION NO.5183 OF 2024

Ishwari Gobindram Samtani

... Deceased

Hiru Prem Daswani

... Petitioner

**WITH
WILL NO.2076 OF 2024
IN
TESTAMENTARY PETITION NO.5183 OF 2024**

Mandakini K. Sinh for the Petitioner.

**CORAM : ARIF S. DOCTOR, J.
DATE : 21ST MARCH 2025**

P.C. :

1. The matter was on board today pursuant to the following requisitions dated 2nd January, 2025 raised by the Testamentary Registrar:

“Advocate for the petitioner submits that earlier the petitioner has filed affidavit of Haresh Ahuja one of the Attesting Witness. Advocate for the petitioner submits that the will was attested by Hiru Prem Daswani and not by Haresh Ahuja. Advocate for the petitioner submits that the will was executed and the attesting witness was Hiru Prem Daswani. Advocate for the petitioner submits that she may be permitted to withdraw the earlier affidavit which was filed on 18.12.2023 by Haresh Ahuja. Advocate for the

petitioner requires to obtain permission from the Hon'ble Court to withdraw the affidavit of attesting witness of Haresh Ahuja who is not a attesting witness to the will. Advocate for the petitioner will seek necessary permission from the Hon'ble Court"

2. From the aforesaid, it can be seen that the Petitioner seeks leave to withdraw the original Affidavit in Evidence of the attesting witness. Learned Counsel submits that the correct Affidavit in Evidence of the attesting witness has already been filed and thus all that is sought for is withdrawal of previous Affidavit dated 18th December, 2023 of one Haresh Ahuja.

3. Having due regard to the submissions made, I am of the view, this is a non-contesting Testamentary Petition. The Prothonotary and Senior Master or any other officer duly authorized in this context can deal with it under Rule 371 of the Bombay High Court (Original Side) Rules 1980, which reads thus:

" 371. Powers of the Prothonotary and Senior Master.- The Prothonotary and Senior Master shall have full power to administer oaths or solemn affirmations in all matters relating to the testamentary and intestate jurisdiction of the Court, to issue sub-poenas to bring in and lodge testamentary papers and documents and to exercise in non-contentious matters the powers conferred by the Indian Succession Act, 1925, on the District Judge."

4. Given the fact that the youngest one of the legal heirs is 70 years old today and I am informed that he is suffering from grievous illness, the matter has been directed to be expedited.

(ARIF S. DOCTOR, J.)