

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 03rd February, 2025

FOR COMPLIANCE:

66. TP/5509/2024
(AMH20240129625C202
400001)

P. C. : Ms. Zainab Tinwala i/b M & M Legal Ventures Ld.
Advocate for the Petitioner

1. Ld. advocate for the petitioner submits that irrespective of the provisions of the Personal Laws applicable to the deceased, names of descendants of the predeceased brother of the deceased, namely Nasruddin Jagmagia(died on 21.12.2003) and Karim Jagmagia(died on 27.02.2014) are mentioned in the legal heir's column, as the petitioner is willing to administer the property among themselves.
2. Perused the affidavit of the petitioner affirmed on 13.01.2025, which is uploaded in the CIS.
3. In paragraph No. 6 of the said affidavit, the petitioner states that this authority has no power to interfere and /or decide as to which heirs of the said deceased are entitled to his properties and estate, as there is family settlement.
4. However, as per Rule 397 of the Bombay High Court (OS) Rules, 1980 the notice or citation of the petition is to be given to the heirs of the deceased as per the provisions of the personal laws applicable to the deceased. Even as per Sec. 218 of the Indian Succession Act, 1925, only a person who is entitled to claim an inheritance to the property of the deceased can apply to the court for administration. Hence, legal provisions are to be followed and the law is binding upon the parties which also prevails upon the family

settlement. This office has to follow the legal provision and not to family arrangement

5. Hence, as prayed in the above-referred affidavit, directions cannot be withdrawn, but the petitioner is to follow the direction and comply with the requisition to furnish correct details of the Legal heirs of the deceased, as per the personal laws applicable to the deceased.
6. It is made clear that the word “legal Heirs” mentioned in Rule 397 of the BHC Rules has to be followed as per the legal provision and not as per the act of the parties, as like family settlement, unless there is a Court Order.
7. Hence, subject to correcting the legal heir's Table, given in the petition as per the provisions of the personal laws applicable to the deceased, a Citation is to be issued.
8. Perused Petition. Issue Citation within two weeks from the date of uploading of this order. Issue Notice to the Collector **vide Rules 396** of the Bombay High Court (O.S.) Rules, 1980 (for short “BHC Rules”). Issue citation to the non-consenting legal heirs of the deceased, if any. Advocate is directed to take steps in this regard. Ld. Advocate for the petitioner to ensure that requisitions under Chapter XXVI of the BHC Rules are complied with.
9. Advocate to take steps in respect of service of General Citation and also to affect the service upon non-consenting legal heirs, if any, as per Rules 399 and 400 of BHC Rules. In case non-consenting legal heirs, the petitioner shall justify the share of such heir/s. The petitioner shall furnish Administration Bond **for the gross amount** as per Rule 420 of the BHC Rules, within one week after that, if there are another legal heir/s other than the

petitioner/s.

10. Office to verify if any cross-petition is filed, if cross-petition is filed, then take steps to place before the Hon'ble Court under Rule 407 of the BHC Rules.

11. S.O. to 24.03.2025.

03.02.2025

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