Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 02nd April, 2025

<u>**FOR HEARING :**</u>

47. TP/6079/2024 (AMH20230020240C202400016)

P. C. : Shri. Prasad Thonse Ld. Advocate for the Petitioner

1. Ld. Advocate for the Petitioner moved a praecipe dated 19.03.2025 and thereby he is relied upon the orders passed in the Testamentary Petition no. 2881/2019.
2. I have gone through the Testamentary Petition No. 2881 of 2019. In the said Petition, the property No. 1 is the immovable Property, which was jointly held by the deceased no. 1 and 2. Whereas, the property No. 2 was Debt, due from the Bank, which was held by the deceased No.1. Hence, the office has raised an objection about the maintainability of the joint petition. Upon mentioning the matter, the Hon'ble Court pleased to pass an order and thereby dispensed with the requisition raised by the department on following ground, -

> *"1. This is a composite petition for letters of administration of to the property and credits of the deceased parents. The demand from the Registry is that there must be a separate Petition filed for letters of administration in regard to the property and credits of the deceased father.*
> *2. There can be no doubt that the heirs, all of whom have consented, have inherited the shares from the father who in turn inherited them from the mother.*
> *3. The requisition is dispensed with."*

3. In the present petition, the deceased No.1 and 2 are husband and wife. However, the deceased No. 1, namely Usha Manohar Desai, had only movable properties, mentioned at Sr. no. 3 and 4, independently. At the same time, the deceased No. 1 held the movable properties, such as debts, with the

deceased No. 2, which are mentioned at Sr. no. 5 to 7.

4. The deceased No.2, namely Manohar Krishnarao Desai alias M. K. Desai, is having immovable properties mentioned at Sr. No. 1 and 2.
5. Hence, the deceased No.1 had not held any immovable properties with the deceased No.2. In the cited order, the petition of the deceased No. 1 and 2 for the grant of Letters of administration was maintainable, even it would have been filed independently. Furthermore, the relief of Sec. 23 of the Maharashtra Court Fee Act, 1958 was available, even independent petition would have been filed. Hence, the Hon'ble Court pleased to allow the joint petition.
6. In the present petition, the petitioner No. 1 did not hold any immovable property. Hence, petition for the grant of the Letters of Administration for the properties left by the deceased No. 1 is not maintainable. However, if the petition for the grant of the succession Certificate in respect of the properties left by the deceased No.1 would have been presented then relief of Sec.23 of the Maharashtra Court Fee Act, 1959 could be granted. Hence, only difference is in respect of the nature of the petition. As per Sec. 370 of the Indian Succession Act, 1925 the petitioner ought to have been applied for the Succession Certificate for the movable properties (Debts) left by the deceased No.1.
7. Under these circumstances, it would be proper to direct the petitioner to file the petition for grant of Succession Certificate in respect of the movable properties left by the deceased No.1.
8. S. O. to 08.04.2025

02.04.2025

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