

Amberkar

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

MISC. PETITION NO. 541 OF 2025

Firoz Afsar Ali

.. Deceased

Farooque Afsar Ali & Anr.

.. Petitioners

.....

- Ms. Tahera Qureshi a/w Ms. Pushpa Thapa, Advocates for Petitioners

.....

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 10, 2025

P. C.:

1. Heard learned Advocate for Petitioners.
2. On 19.09.2025 this Court passed the following order:-

"1. Heard Ms. Qureshi, learned Advocate for Petitioners.

2. Present Misc. Petition is filed by Petitioner for issuance of legal heirship certificate under Section 2 of Bombay Regulation VIII of 1827 in respect of the properties and credits of deceased Firoz Afsar Ali. The names and details of legal heirs of the deceased are stated in paragraph No.4 of the Petition.

3. Learned Advocate would inform that one of the sister whose name is appended at Sr. No.2 in the said paragraph has not given her consent. Rest of the legal heirs have all given their consent which are appended to the Petition which are filed separately. Original copies of consent of the other legal heirs are given to the Court. I have perused the said copies. They are taken on record. Department shall examine and confirm the same in the meanwhile.

4. Learned Advocate informs the Court that Zaibunnisa Mohd. Sadique alias Zaibunnisa Afsar Ali, the legal heir who has not filed her consent and whose share is not denied by Petitioner is playing truant with the Petitioners. She would submit that proclamation has also been issued. Attempt to serve her has already been made, but the packet has been returned back by her with remark 'address left'. She would submit that according to her instructions, she is very much residing at the very same address but has refused to accept service in fact.

5. Learned Advocate on instructions would submit that the said Zaibunnisa Mohd. Sadique alias Zaibunnisa Afsar Ali is very much in touch

with Petitioners and she is infact harassing the Petitioners for a larger share in the estate of deceased. Be that as it may, the concerned Petitioner with whom Zaibunnisa is in touch with and who can affirm the aforesaid facts is directed to file appropriate Affidavit to that extent. Report of proclamation from the Department be placed before Court on next date alongwith the returned packet.

6. *Copy of this order shall be served afresh on Zaibunnisa Mohd. Sadique alias Zaibunnisa Afsar Ali. Private notice is permitted.*

7. *In view of the above facts, if Zaibunnisa's phone number is available with Petitioners, copy of this order shall be served on WhatsApp to Zaibunnisa so that she will take cognizance of this order. Once the WhatsApp services is effected Affidavit of service be filed by Petitioners before me. If the aforesaid compliances are done and even thereafter if Ms. Zaibunnisa remains absent in the Court, this Court shall not await her presence and in view of her non denial allow the present Petition in accordance with law by passing appropriate order.*

8. *List the matter on Board on **3rd October 2025 for Compliance and passing further orders.***

9. *Needless to state that if Zaibunnisa has any grievance, the same shall be undoubtedly heard by the Court. The original consents which are given to the Court today shall all be ascertained by the Department and if there is any discrepancy therein, the same shall be pointed out to the Court on the next date."*

3. The share of non-consenting legal heir is not disputed. In that view of the matter, there can be no impediment in allowing the Petition and also dispensation of surety of non-consenting legal heir. Petitioner is therefore allowed in terms of prayer clause (a) which reads thus:

"a) This Hon'ble Court be pleaded to issue a Legal Heirship Certificate under the provisions of the Bombay Regulation Act, VIII of 1827 certifying that the Petitioners viz. Farooque Afsar Ali and Zakir Afsar Ali alongwith Zulekha Afsar Ali, Zaibunnisa Mohd. Sadique alias Zaibunnisa Afsar Ali, Taher Ali Afsar Ali, Mona Waqar Siddique alias Mona Afsar Ali and Tehsin Firoz Ali are the only legal heirs and representatives of the Deceased Firoz Afsar Ali;"

4. Surety of non-consenting legal heir is dispensed with.

5. Issuance of proclamation stands dispensed with.

6. Department is directed to issue the legal heirship certificate as directed above within a period of 3 weeks from today positively.

7. Misc. Petition is allowed and disposed subject to compliance of office objections, if any, forthwith which shall be allowed by the Department. It is clarified that the 3 week period shall start from the date of removal of office objections.

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[MILIND N. JADHAV, J.]

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