

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

INTERIM APPLICATION NO.2381 OF 2024

IN

TESTAMENTARY PETITION NO.939 OF 2024

Chandanben Malukchand Tolia alias

Chandan Malukchand Tolia

... Deceased

Dinesh Malukchand Tolia

... Applicant

In the matter of

Dinesh Malukchand Tolia

... Petitioner

Mr. Tejas Vora & D. R. Mishra for the Applicant.

CORAM : ARIF S. DOCTOR, J.

DATE : 07TH JANUARY 2025

P.C. :

1. The present Interim Application seeks dispensation with the office objection, which reads thus:

"Ld. Advocate for petitioner to explain how this petition is maintainable for Letters of Administration with Will when there are executors are appointed under the Will."

2. I have heard Mr. Vora, Learned Counsel for the Applicant, who points out that the Applicant is one of the beneficiaries of the Last Will and

Testament of late Chandanben Malukchand Tolia alias Chandan Malukchand Tolia. He points out that under the said Will and Testament of the deceased, two Executors were appointed, one of whom, viz., Kishore Keshavlal Doshi has expired and the other Executor Mr. Jitendra Keshavlal Doshi has not filed a Petition for Probate, despite the long passage of 32 years. He points out that the Petitioner has therefore addressed a letter dated 10th July 2024 to Mr. Jitendra Keshavlal Doshi calling upon him to send a renunciation in his capacity as an Executor within a period of 8 days of receipt of the said letter. Mr. Vora points out that Mr. Jitendra Keshavlal Doshi has refused to accept the said service and it is thus that his renunciation is apparent.

3. Having heard Learned Counsel, I find that the Petition deserves to be allowed. It is clear to my mind that even absent his refusal the sole surviving Executor has not taken any steps to obtain Probate of the Will for the last approximately 25 years. Beneficiary of the Will cannot therefore be deprived the benefits of the said Will. Hence, Interim Application is allowed in terms of prayer clause (a) and (b) which read thus:

“(a) The office of the Prothonotary & Senior Master, High Court, Bombay be ordered and directed to dispense with the preliminary objections/requisition dated 28.06.2024 raised by the office as to "How this Petition is maintainable for Letters of Administration with Will annexed when there are executors appointed under the Will".

(b) The office of the Prothonotary & Senior Master, High Court, Bombay be directed to proceed with Petition No.939 of 2023, for Letters of Administration (L/A) with Will annexed to the property and credits of CHANDANBEN MALUKCHAND TOLIA alias CHANDAN MALUKCHAND TOLIA, the deceased abovenamed in accordance with the law;"

4. The present Interim Application is accordingly disposed of.

(ARIF S. DOCTOR, J.)