

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 3605 OF 2024
IN
TESTAMENTARY PETITION NO. 2330 OF 2023

Sharmila Abhay Palkar

...Applicant

Surendra Raghunath Potnis

...Deceased

Mr. Pravinchand Gole i/by Balu Dhatrak for the Applicant.

CORAM : ARIF S. DOCTOR, J.

DATE : 25TH FEBRUARY, 2025

P.C.:-

1. The present Interim Application is filed seeking the following prayer:

“a) that this Hon’ble Court be pleased to dispense with the justifying surety of non-consenting legal heir viz. Vikrant Surendra Potnis (Son of the deceased), in view of the undertaking given by the Applicant (Orig. Petitioner) in Para No. 12 and 13 of present Interim Application.”

2. Learned Counsel appearing on behalf of the Applicant points out that Additional Registrar/Additional Prothonotary and Senior Master vide an order dated 12th February, 2024 permitted the Petitioner to serve one Vikrant

Surendra Potnis, who is one of the legal heir of the deceased with the copy of the Petition by way of the paper publication. He submits that the said paper publication has been effected and relied upon an affidavit dated 2nd March, 2024 in support thereof. He submits that despite this, the said Vikrant Surendra Potnis has not come forward to either consent or oppose the grant. He submits that it is thus that the present application has been taken out seeking to justify the surety of the non-consenting legal heirs i.e. Vikrant Surendra Potnis, son of the deceased.

3. Learned Counsel invites my attention to the Interim Application and submits that the Applicant is willing to submit indemnity to this Court in whatever format is required as also an undertaking that the Applicant shall not sale the property mentioned in Schedule I to the Testamentary Petition without the permission of this Court, if Letters of Administration is granted.

4. Accepting the undertakings given in paragraphs 12 and 13, I find the Interim Application can be allowed. The said undertakings read thus:

“12. I further say and undertakes to indemnify and keep indemnified to this Court and the Registrar (O.S.), Prothonotary and Senior Master and to save them harmless, against any harm, loss or prejudice being caused to them on account of Letters of Administration being granted to me as one of the legal heir of the deceased. I further stated that save and except requisition justification of surety, rest of the requisitions are complied with. I further states that the proceedings are uncontested as none has filed caveat.

13. I say that hereby undertake that I will not sell the property mentioned in Schedule – I in Petition without the permission of this Hon'ble Court, if this Letter of Administration is contested or challenged in this Court of Law. I further say that in this event, if I propose to sell the property, then I will make necessary application to this Hon'ble Court and will justify the surety as per law."

5. The Interim Application is therefore allowed in terms of prayer clause (a) already reproduced above and disposed of accordingly.

(ARIF S. DOCTOR, J.)