

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

NOT ON BOARD, TAKEN ON BOARD :

144. TP/980/2025 P. C. : None for the Petitioner

1. The matter was called at 09:45 am no one appeared.
2. On the 28th and 30th day of April 2025, I heard learned advocate for the point of the residual Clause of the Will as well as the codicil of the deceased. A learned advocate for the petitioner invited my attention towards para No. 10 of the Will. He further submitted that para No. 11 has to be read with paragraph No. 10 of the Will. According to him para No. 11 of the Will is in respect of the movable properties and 8 equal shares are proposed to be given to the Legatees, whose names have been mentioned in paragraph No. 10. Hence, Ld. Advocate for the petitioner submitted that paragraph No. 11 is in respect of the movable property. Thus, according to him, the property mentioned in Schedule I of the present petition is not part of the ratio gear clause of the said will.
3. Before proceeding, I have reproduced the opening lines of these two paragraphs below, which read as under, -

“10. After giving all donations and distributing my estate as stated above, the residue of my estate in moveable properties, including shares, debentures, investments in Bonds, Mutual funds, Bank Fixed Deposits, I direct my Executors and Trustees to distribute the same equally, as per the market value of the asset at the time of distribution, amongst the following EIGHT legatees named below either in piecemeal or in one lump sum. In Event”

“11. The eight equal divisions for the residue of my properties be made on the decision of the Executors and Trustees as to market value or for choice of a particular asset to a particular legatee, would be final and at their entire discretion only. If any asset is not divisible then only the legatee taking over the said whole asset, shall give simultaneously the

amount to the seven. Remaining legatees after deducting for his/her own 1/8th share in the said asset. I sincerely..."

4. Later, by Codicil, the number of legatees is reduced at Six(06), in these both paragraphs. Except numbers, there are no changes in these two paragraphs of the Will.
5. It is a general rule that Will has to be read as a whole and words used in the said Will have to be read with its general meaning which otherwise are being used in day-to-day affairs. In para No. 8 of the will still takes has directed the executors to spend money from her State for performing her last rites, etc. In para No. 9 of the said Will, the provision is mentioned in respect of movable as well as immovable properties of the deceased, in a manner given in para No. 9. Soon thereafter, para No. 10 is incorporated in the Will as per provisions of the said paragraph, it appears that testatrix has made a provision to distribute residue of estate in movable properties, including shares, debentures, investments in bonds, mutual funds, etc. The testatrix has given direction to the Executor and trustee to distribute these properties equally among the 08 persons whose names have been given in the said paragraph, as per the market value of the assets and time of distribution. Hence this para No. 10 is in respect of the residue of movable properties of the deceased, if any. By Codicil, the numbers of legatees are modified from Eight(08) to Six(06).
6. After para No. 10 of the Will, the testatrix has incorporated para No. 11. Upon perusal of this paragraph, it appears that the testatrix has made a provision about the residue of her properties. This clause provides distribution of the properties as per the market value, at the time of distribution and discretion is given to the executor of the Will, in case of any asset is not divisible.
7. Ld. advocate for the petitioner submitted that para-No. 11 is a counterpart of para No. 10 of the Will and therefore, it is in respect of the movable properties. However, in para No. 10, the provision of distribution

of the movable properties has been incorporated and as per said provisions, movable properties are to be distributed among 06 legatees, piecemeal or in one lump sum. Therefore, there is no doubt left about the distribution of the immovable properties which comes under the residual clause of the will. After this paragraph, testatrix has incorporated para No. 11, which also has a similar wording. In paragraph 10 word immovable was used, whereas in subsequent paragraphs no such wording has been used. Hence, a query was raised.

8. Upon going through the written submission, dated 30.04.2025, of Ld The advocate of the petitioner, along with the copy of the probate, it appears in para No. 11 of the Will and later in a Codicil, testatrix made provision in respect of the residual movable property, which is not mentioned herein before in the Will. Furthermore, the reference to Six(06) Legatees is continued in paragraph No. 11 of the Will. In paragraph No. 11 of the Will, the manner of distribution as well as remedy in case of dispute is provided. Hence, the submission of Mr. Mehrasp Mistry, Ld. Advocate for the petitioner is acceptable. Accordingly, the petition is taken up for further order.
9. Vide an order dated 24.04.2025, it is noted that the Entire petition and the verification are without dates. Hence, the petitioner to take steps to amend the petition, according to law, so that, further order will be passed.
10. S.O. to 05.05.2025.

02.05.2025

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11. In the afternoon session, Ld. advocate Mr. Paranjape, appeared. The next date and order are communicated to him.

02.05.2025

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