

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 14th October 2025

FOR COMPLIANCE :

63. TP/3772/2025) Shri. Vikram Goel, Ld. Advocate for the Petitioner
(AMH20230003771C202500003))

P.C.:

1. Petitioner, namely AMINABAI TAYEBALI RAJKOTWALA, filed the Petition for Letters of Administration, to the Property and Credits belonging to Nafisabai Alibhai Rajkotwala, also known as Nafisa A. Rajkotwala, Nafisa Rajkotwala, N. A. Rajkotwala, Rajkotwala N.A., N.A.R. (for short "said deceased").
2. The petitioner states that the deceased died a spinster. Her parents and grandparents have predeceased her. The deceased had one brother, namely Tayebali Alibhai Rajkotwala, who predeceased the deceased. Said brother died issueless and left his widow. The petitioner is the Widow of said brother.
3. Ld. Advocate for the petitioner submit that the petitioner, being the widow of the deceased brother, has filed the petition as there are no other legal heirs available. He has drawn my attention towards provisions of Muslim law from the book, namely "*Commentary on Mohammedan Law*" by I. Mullah, published in the year 2021 by Sweet and Soft Allahabad – 211001.
4. He invited my attention towards page No.115 from the said book and submitted that the Bohras (including Daudhi Bohras and Sulemanis) of western Ismailis are of the Shia Sect, and therefore, the deceased as well as the petitioner belong to the Shia sect applicable to the Muslim religion. Ld. Advocate for the petitioner submits that the deceased died Unmarried and her parents and grandparents predeceased the deceased. Ld. Advocate for the petitioner further submits that, as per the provisions of the Muslim Personal Law (Shariat) Application Act, 1937, which applies to the present case in hand, certain provisions are also looked into. He further invited my attention towards the classification of heirs, given in Synopsis No. 59, on page No. 923 of the said book. As well as the general principle of inheritance of Shia is given in synopsis No.58. As per synopsis No.58, ascendants, descendants, and Collaterals inherit together, and thereafter there is an order of succession. According to it, all descendants were given the first position, and among the ascendants, only the nearest, that is, the parents, were allowed to inherit with them; thereafter nearest relation preferred to the remoter within each of the three classes.
5. In Shia law, heirs are divided on two grounds. Such as, heirs by Consanguinity (Nasab), that is, blood relationship and heirs by Special Cause(Sahhab), that is, heirs by marriage (Husband and Wife). Heirs by consanguinity include parents and children. It is further divided into three(03) classes. Class-I comprises (i) parents, (ii) children and other lineal descendants how how soever. The Class-II includes (i) grandparents

(true or false) how high soever and (ii) brothers and sisters and their descendants, howsoever long. The Class-III includes (i) Parental and (ii) maternal uncle and aunts (brother and sisters' mother) of the deceased and of his parents and grandparents. How high soever, and their descendant, how low soever. It is further clarified that Class-I excludes Class-II and Class-II excludes Class-III, but heirs of different sections within class inheritance together and do not exclude each other. In these circumstances, the heir who is nearer in degree in each section excludes the remote. Lastly, heirs by special cause are divided into two kinds, namely (i) heirs by marriage (Zoujiyat) and (ii) heirs by special relationship (Wala). These kinds of heirs are given on page No. 924 of the said Book.

6. In this regard, I have gone through the provisions of succession in respect of the Shia Muslim provided in chapter 8 in the book *"Principles of Mohammedan Law"*, 23rd Edition published by Lexus Nexus, in the year 2024 (reprint). As per the provisions in law, there is a table of sharers; as per the said table, 9 persons are denoted as sharers. It is referred to on page No.135. Furthermore, the theory of representation is applicable in the Shia Sect.

7. It appears that Ld. Advocate for the petitioner relies upon the class of the legal heirs, which is under the heading of brothers and sisters and their descendants, how low soever. According to the Ld. Advocate for the petitioner, being the widow of the predeceased brother, comes under that category as a descendant, how low soever. Furthermore, he submitted that the petitioner is related to the deceased by marriage with the predeceased brother and therefore, she can claim and inherit the property left by the deceased.

8. Synopsis No.100 on page No. 143, in the book *"Principle of Mohammedan Law"*, provides that a descendant of a brother and sister without any ancestral can inherit the property of a Muslim person.

9. As per these provision, children of each full or consinee brother will take portion which their father, if leaving, will have taken as a residuary and they will divide it among them according to the rules of double share to the male and the children of each full or consinee sister will take the portion which their mother if living would have been taken as a sharer or as a residuary and divide it among them according to the rule of double share to the male. Furthermore, the children of the brother will take the portion which their father, if leaving would have taken as a sharer and they will divide it equally among them and so will the children of each uterine sister and lastly if there are no children of brother or sister, the estate will devolve upon the grandchildren of brother and sister according to the principle of representation. In that case, the grandchildren of a full or consinee brother and sister take the portion which they are represented parents if leaving have taken and divided among them according to the rule of the double share to the male and vice versa in case of the female legal heir.

10. However, after going through the relevant provision from these two Books, it does not appear that under the rule of representation, the property goes to the

predeceased brothers' widow. However, it goes to the children of full or consinee brother and sister, and in the absence of children of brother and sister, it further goes to the grandchildren of brother and sister. Therefore, submission of Ld. Advocate is that the petitioner, being the widow of the predeceased brother, is related to the deceased by virtue of marriage of affinity (Zoujiyat), page No.925 of the Book, namely "*Mohammedan Law*". If that terminology or explanation is accepted, then and only then petitioner will be entitled to claim the inheritance. However, on this count, there is no president place before me to accept such submission and therefore, it will be proper to refer the matter before the Hon'ble Court vide Rule 429 of the Bombay High Court (O.S.) Rules, 1980. The issue involved in the subject matter of the Petition is in respect of the interpretation of the statute or provisions of the law in this regard.

11. Stand over to 10.11.2025

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