

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 29th January, 2026

FOR HEARING :

78. TP/2327/2025) Ms. Sneha Agicha i/b D M Harish & Co.
(AMH20240128631C202500005)) Ld. Advocate for the Petitioner

P.C.:

1. Petitioner, namely AMITABH NANDA, states that the Will is executed by Anil Kumar Malhotra alias Neil Monet (herein after the same is referred to as “Testator”). Petitioner filed the petition for the Letters of Administration with Will Annexed, being the representative of the sole legatee under the Will, (namely Pamela Gale Malhotra).

2. Heard, the Ld. Advocate for the petitioner. She has submitted that soon after the date of the deceased, as per the provisions of the Hindu law, the deceased is survived by his brother as of today. Therefore, the brother of the deceased is shown as a legal heir as per the provisions of Section 9 read with Schedule-II of the Hindu Succession Act, 1956 (for short “HS Act”). She further relied upon the decision of the Supreme Court in the case of **Krishna Kumar Birla V/s Rajendra Singh Lodha and others (MANU/SC/1693/2008)**. She further submitted that in a testamentary matter, the citation is required to be issued only to the person/s who have a caveatable interest. In the cited case, there were similar circumstances because husband and wife both executed the Will, and they died issueless, and as per their testament, the survivor of them would get the property, and after the date of the survivor, their Will had a clause to bequeath the properties to Charity. Similarly, in the present petition, both the deceased died issueless, and their separate Wills of each other had a clause that the survivor of them would be the legatee, and if their spouse predeceased the testator or testatrix, as the case may be, then the properties would go to the charity. Ld. Advocate for the petitioner also submitted that the petitioner, being the executor appointed under the Will of the deceased’s widow, relies upon sections 233 read with 213 and 211 of the Indian Succession Act, 1925 (for short “IS Act”).

3. In the cited case, **Krishna Kumar Birla**, both husband and wife executed a will, and died issueless. Furthermore, Will executed by either of them had a clause that the survivor of them would get the property, and in case the spouse predeceased, then the property would go to Charity. To the extent of these facts, this case is similar. However, in the referred case, the husband and wife were Hindu. However, in the present case, the husband was Hindu and the

wife/widow was Christian.

4. In the present case, Ld. Advocate for the petitioner submits that there is no requirement to serve the citation to the legal heirs of the widow as the petitioner mentioned the deceased's brother as his sole legal heir in view of the provision Sec. 9 of the Hindu Succession Act, 1956 (for short "HS Act"). However, in the present case, the religions of the husband and wife are different, and therefore, the law of succession applies to their property accordingly. In a case of a deceased, provisions of the Hindu Succession Act, 1956 (for short "HS Act") would apply, and in the case of a widow, provisions of the Indian Succession Act, 1925 (for short "IS Act") would apply.

5. I have gone through the petition. It appears that the deceased was Hindu at the time of his death, leaving his widow, who was professing a Christian religion. Petitioner has filed an affidavit affirmed on 18.12.2025, stating that the marriage between the deceased and her wife was solemnised in America and to support his submission, he has produced a document which is marked and Annexed to the said affidavit. I have gone through the affidavit and document. Hence, it appears that the marriage of the deceased and his wife is not solemnised or registered under the provisions of the Special Marriage Act, 1954.

6. As per the chronology of the facts, the deceased died on 22.11.2021, leaving his widow as his sole surviving legal heir, as per the provisions of the Hindu Succession Act, 1956. At the time of his death, the deceased was a Hindu and therefore, the provisions of the Hindu Succession Act, 1956 would apply to the property left by the deceased. As per the provisions of the Will, properties were vested in the Widow of the deceased. Thereafter, the said widow died, leaving her Will, and she appointed the present petitioner as an executor to execute her Will. The executor filed a Testamentary Petition, having No. 2284/2025. According to the rule of law and procedure, which was followed by the petitioner for issuance of the Probate, the petitioner described the widow's brothers and sisters as her heirs, as per the provisions of sec. 41 to 48 of the Indian Succession Act, 1925 (for short "IS Act"). However, all these legal heirs had consented to the petition, and therefore, citation to these legal heirs vide Rule 397 of the Bombay High Court (OS) Rules, 1980 had not been issued.

7. No doubt, in respect of the present case, the petitioner has shown the brother of the deceased as his sole surviving legal heir. However, as property, devolved upon the widow of the deceased, soon after his death and later on, after the death of the Deceased's widow, upon her legal heir would have an interest in the properties, and they may claim through said Widow in said

properties as per laws of succession. Apart from this, in a petition filed for the issuance of the Probate(TP No.2284/2025), they were shown as the legal heirs of the Widow.

8. Furthermore, it is pertinent to note that properties mentioned in the present petition are also subject matter of the Probate Petition. Hence, the heirs of the Widow are aware of the description of the properties and provisions of the Will of the Widow.

9. Therefore, it is a question before the office that in the present petition, the citation is required to be served upon the heirs of the Widow of the deceased as per Rule 397 of the Bombay High Court (OS)Rules, 1980. Therefore, considering the circumstances of the present case, the office is unable to determine the issue in view of the provisions of Rule 397 of the Bombay High Court (OS)Rules, 1980, and therefore it would be proper to seek directions from the Hon'ble Court on this point, as it relates to the provisions of the laws and interpretation.

10. Stand over to 04.02.2026

29.01.2026

**Officer on Special Duty,
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