

Amberkar

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

PETITION NO. 4112 OF 2025

Peter Desouza

.. Deceased

Corrine Gabriel D'Souza

.. Petitioner

.....

- Ms. Nerissa Almeida i/by Ms. A.S. Khushrushahi, Advocates for Petitioner

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 9, 2026

P. C.:

1. Not on board. Mentioned by way of filing a praecipe dated 09.01.2026.
2. Heard Ms. Almeida, learned Advocate for Petitioner.
3. Praecipe is filed for seeking dispensation with twin objections raised in requisition dated 07.11.2025.
4. Insofar as objection at Sr. No. 1 is concerned, learned Advocate informs the Court that to the best of the knowledge of Petitioner, the attesting witnesses are no more present and she does not have any details of them. However she would contend that daughter of the deceased was present at the time of execution of Will and the same may therefore be accepted. She has filed affidavit of the daughter as third party witnessing execution of the Will. Said affidavit is already

on record. Department is directed to accept the same thereby dispensing with Rule 384 of Bombay High Court (OS) Rules 1980 and proceed with issuance of grant in accordance with law thereafter.

5. Insofar as objection at Sr. No. 2 is concerned, there is a legacy bequeathed to the third party in the Will of the deceased to the effect that in the event if the two beneficiaries under the Will sell the immovable property belonging to the deceased then they shall sell the property to the said legatee only and that too at 2/3rd of the market rate. Learned Advocate would contend that the said bequeathed is a conditional bequest and subject to the condition if the beneficiaries sell the property only and there is no direction in the Will to the beneficiaries to sell the property. If this is the case, then the objection raised in serial No. 2 in the requisition cannot sustain. Consent of the said legatee is not required or called for in that event. Department shall ascertain the above position from the reading of the Will. Needless to state that since the beneficiary is the sole surviving Petitioner, she is directed to file appropriate affidavit cum undertaking and indemnity bond to the effect that if she has to sell the subject immovable property, then she shall abide by the aforesaid condition stated in the Will. The aforesaid condition shall also be replicated in the grant to be issued by the Department. In view thereof, the objection raised at Sr. No. 2 is dispensed with.

6. Department shall proceed with issuance of grant and issue the same within a period of three weeks from today to the Petitioner subject to all other compliances strictly in accordance with law.

7. Praecipe is disposed.

Amberkar

[MILIND N. JADHAV, J.]

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