

Before: Shri. P. A. Jagdale,
 Officer on Special Duty,
 With the Testamentary Department
 Date: 07th March, 2026

FOR COMPLIANCE:

50. TP/6610/2025	)	
(AMH20230040595C202500022)	)	Mr. Sahil Sayed, Ld. Advocate for
with	)	the Petitioner
WILL/2519/2025	)	

PC.:

- 1) Petitioner, namely PILOO PERCY BHAGWAGAR, filed this petition for grant of Letters of Administration with Will Annexed, being the Constituted attorney of Viraf Homi Karai, a one of the Executor under the Will executed by Pearl Homi Karai (herein after the same is referred to as "Testatrix"), for the grant of a Letters of Administration with Will annexed. The Said Testatrix said to have died at Mumbai on 10-03-2024.
- 2) Perused petition. Heard Ld. Advocate for the petitioner. Perused documents. He pointed out that in the order dated 27.02.2026 in 04th line of paragraph No.1 word not is remained to be added. Submission is accepted in view of provisions of Sec. 141 of the Indian Succession Act, 1925 (for short "IS Act"). Accordingly, the word "not" is added after word 'can' and order is corrected. Furthermore, he is relied upon the decision of the Hon'ble Bombay High Court in case of John Francis **Anthony Gonsalves and another V/s Agnes Mary Cnception Rebello (2007 SCC OnLine Bom 799= AIR 2008 Bom 1)**.
- 3) Petitioner, filed the copy of death certificate, affidavit for dispensation of a requisition to produce an identity proof of the testator, Will, along with its official translation, petitioner's oath.
- 4) The petitioner has explained the delay vide Rule 382 of the Bombay High Court (Original Side) Rule, 1980(for short "Rules").
- 5) Ld. Advocate for the petitioner is relied upon the decision of the Hon'ble Bombay High Court in above cited case of **John Francis Anthony Gonsalves (Cited Supra)**. It is laid down that the executed had no time to apply for the probate in respect of the deceased's Will; however, he acted in accordance to the said Will. Hence, he had manifested his intention to act as executor.

6) In this regard Sec. 241 and 242 of the Indian Succession Act, 1925 (for short "IS Act") are also relevant, thus these provisions are reproduced as under, -

"241. Administration, with will annexed, to attorney of absent executor.—When any executor is absent from the State in which application is made, and there is no executor within the State willing to act, letters of administration, with the will annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

7) In this regard the Advocate for the petitioner submits that another executor Gulshan Eric Lawyer, who is also one of the legatees under the Will, is out of the India and therefore she could not apply for the probate vide Sec.222 of IS Act. Hence, is relied upon the provisions of Sec. 241 of IS Act. He argued that if this executor renounced her right to apply for probate, then she would not get the legacy vide Sec. 141 of IS Act and therefore, she has reserved her right to apply for the probate by proving the Will, which shows that she has manifest intention to prove the Will. In this regard word "State" is important. Word "State" is defined vide Sec. 2(g) of IS Act, which read as under, -

Sec. 2(g) of the Indian Succession Act, 1925 (for short "IS Act")

(g) "State" includes any division of India having a court of the last resort;]

8) The executor, namely Gulshan Eric Lawyer, is in New Zeland. She has filed her affidavit at Page No. 29 (Exh._G) of the petition. Therefore, said executor is not within the State. The petitioner, being the Power of Attorney Holder of one of the Executors Mr. Viraf Homi Karai under the Will, is entitled for the grant of Letters of Administration vide Sec. 241 of IS Act. Hence, the petition is tenable.

9) Petitioner stated that the deceased left behind her last Will and Testament, which was duly executed at Mumbai on 01.04.1988, 16.08.2002(Codicil) & 28.05.2016(2nd Codicil) and 08.07.2016(3rd Codicil), in English language. The Will is handed over separately for being filed and kept in a safe place in the Office of the Prothonotary and Senior Master, High Court, Bombay.

10) Ld. Advocate for the petitioner submits that the Testatrix's husband and parents predeceased the deceased. The testatrix is survived by Virag Homi Karai(son) and Gulshan Eric Lawyer(daughter), as her legal heirs, whose details are given in the petition's paragraph No. 10, as per the provisions of the Indian Succession Act, 1925. The petitioner affirmed that there are no other legal heirs of the deceased, except as mentioned in the petition. Legal heir of the testatrix has consented to the petition and thereby waived the service of Citation.

11) Citation to all Concern was issued and same has been duly affixed on the conspicuous part of the Hon'ble High Court and notice board of the Collector's Office at Mumbai and 14 days have been expired vide Rule 397(1) and (4) of the Bombay High Court (O.S.) Rules, 1980(for short "BHC Rules") and an affidavit to that effect has been filed. Notice to collector has been issued vide Rule 396 of BHC Rules. Till today, no one appeared to resist the claim of the petitioner or nothing is brought to the notice regarding pending litigation pertaining to the same properties. Hence, the petition is treated as uncontested one.

12) The petitioner has filed the affidavit of Percy P Bhagwagar, one of attesting Witnesses to the Will and Codicil, in form No.102 of Bombay High Court (Original Side) Rules, 1980. This witness further deposed that the testatrix executed a Codicils on 16.08.2002, 28.05.2016 on 08.07.2016. In his presence as well as in presence of another witness Kurush F. Engineer. He deposed that deceased signed the Testament and Codicils in his presence and the testatrix was in sound state of mind at the time of execution of the Will. Hence, enough evidence is on record to accept the execution of the Will and petitioner is succeeded to prove the execution of Will. According to him all additions and alteration in a Will were existed at the time of execution before signing the Will. Hence, there is sufficient compliance of the Rule 383 of the Rules.

13) Properties mentioned in the schedule-I of the petition are referred in the Will.

14) Other legatee, namely Gulshan Eric Lawyer, has given consent to grant Letters of Administration to petitioner.

15) Another executor Gulshan Eric Lawyer has reserved her right to come and apply for the probate and she is not renouncing the right to apply for the probate due to her personal reasons.

16) Petitioner has executed the administration Bond in the prescribed format. Hence, following order:

ORDER

- 1) Petition is granted.
- 2) Office to issue Limited Letters of Administration with Will annexed to the petitioner, as per the Rules, having effect throughout the State of Maharashtra.
- 3) Before issuance of Letters of Administration with Will, the office to verify that there is no cross Petition is pending or caveat is filed. Office to act accordingly.

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Officer on Special Duty,
with Testamentary Department