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

MISC. PETITION NO. 681 OF 2026

Milind Kashinath Naik ...Petitioner

Kanta Kashinath Naik ...Deceased

Mr. Amardev Uniyal for Petitioner.

CORAM: AARTI SATHE, J.

DATE: 15 JUNE 2026

P.C.

1. Heard Mr. Uniyal, learned Counsel for the Petitioner.
2. By this petition filed under the provisions of Bombay Regulation VIII of 1827, the Petitioner seeks issuance of legal heirship certificate in favour of the surviving legal heirs of the deceased.
3. The deceased was the mother of the Petitioner. The deceased expired on 18th March 2006. A copy of her death certificate is annexed to the petition at Exhibit-A. It is stated that at the time of her death, the deceased was residing and had a fixed place of abode at E/2, 206, Bharat Nagar, Grant Road, Mumbai-400007. The husband of the deceased Mr. Kashinath Ganesh Naik, predeceased on 12th October 1972. It is also stated that the deceased died intestate, without leaving behind any testamentary writing or Will.
4. In paragraph 5 of the petition, the Petitioner has given details of the surviving legal heirs of the deceased i.e. two sons (one of them is the Petitioner)

and one daughter. It is specifically stated that the parents of the deceased have predeceased her.

5. The petition also annexes the consent affidavit dated 12th February 2026 of Ms. Smita Sachendra Partagalkar nee Smita Kashinath Naik and Mr. Kundan Kashinath Naik, who have given their no objection to the grant of legal heirship certificate in favour of the Petitioner, without service of proclamation/citation/notice upon them and have accorded their full and free consent to the same.

6. It is stated that the legal heirship certificate is required jointly, in the name of the Petitioner along with other two heirs to obtain formal recognition as existing status as the legal heirs of the deceased in all the official records.

7. It is stated that no other petition for heirship certificate, succession certificate, probate or letters of administration with or without Will have been filed. There is, therefore no impediment to the grant of the relief.

8. As far as prayer for condonation of delay is concerned, learned counsel for the Petitioner has placed reliance on the decision of this Court in **Ganpati Vinayak Achwal¹**, and stated that since the cause of action is continuous, delay should be condoned. This Court in Ganpati Vinayak Achwal (supra) has held that the right to apply is a continuous right which is capable of being exercised as long as the object of the trust exists, or any part of the trust, if created, remains to be executed. Being a continuous right, it can be exercised at any time after the death of the deceased, as long as the right to do so exists. The right to apply may, therefore,

¹(2014)6-Mh.L.J.683

accrue not necessarily within 3 years from the date of the deceased's death but when it becomes necessary to apply, which may be any time after the death, of the deceased, be it after several years.

9. A similar view was taken by this Court in **Vasudev Daulataram Sadarangani Vs. Sajni Prem Lalwani**², and by the Madras High Court in **S. Krishnaswami, E. Devarajan v. E. Ramiah**³. In *Vasudev Daulataram* (supra), this Court held that the Limitation Act, 1963 would not apply in the matter of grant of probate or letters of administration as the right to apply is a recurring one. Relevant excerpts of the judgment in *Vasudev Daulataram* (supra) are as under :

“8. As regards the applicability of section 137 of the Limitation Act to the petitioners application, Mr. Badgujar relying upon the decision of this Court in the case of *Vasudev Daulataram Sadarangani v. Sajni Prem Lalwani*, reported in 1984 (1) BCR 211, and the decision of the Madras High Court in the case of *S. Krishnaswami, E. Devarajan v. E. Ramiah*, reported in AIR 1991 Mad. 214, submits that the right being a continuous right, it does not get barred by the law of limitation.

9. In the case of *Vasudev Daulatram* (supra), the petitioner had sought Letters of Administration with the Will of his father annexed. The same was objected to by the petitioner's sister and one of the grounds taken up by the sister was that the suit for Letters of Administration was barred by the law of limitation. While rejecting the contention our High Court observed as follows:—

“Under the Limitation Act, no period is advisedly prescribed within which a petition for probate or letters of administration or succession certificate must be made after the deceased's death. There is no warrant for the assumption that the right to apply envisaged in Article 137 necessarily accrues on the date of the death of the deceased. Such an application is to seek the Court's imprimatur to perform a duty created by a Will or for recognition as a testamentary trustee. The right to apply is a continuous right which is capable of being exercised as long as the object of the trust exists or any part of the trust, if created, remains to be executed *Gananamuthu Upadesh v. Vana Koilpillai Nadan*, 5, ILR 17 Madras 379, 381. Being a continuous right, it can be exercised at any time after the death of the deceased, as long as the right to do so exists. The right to apply may, therefore, accrue not necessarily within 3 years from the date of the deceased's death but when it becomes necessary to apply, which may be any time after the death of the deceased, be it after several years.”

²1984 (1) BCR 211

³AIR 1991 Mad. 214

10. Identical view has been taken by the Madras High Court in S.Krishnaswami's case (supra) by holding that Article 137 of the Limitation Act, would not apply to proceedings filed for grant of probate or Letters of Administration with or without Will annexed, as the right to apply is a recurring one. Considering the nature of the proceedings, it further held that, such applications only seek recognition of the Court to perform duties and the proceedings filed for grant of probate or Letters of Administration is not an action in law.

11. I am in respectful agreement with the view expressed in the decisions cited. Though the decisions relate to petitions for probate, letters of administration and succession certificate, the proposition of law expounded therein would be equally, if not more, relevant to an application for heirship certificate. Such an application is also to "seek the Courts imprimatur for recognition as an heir". Therefore, the right to apply for heirship certificate is also a continuous right which is capable of being exercised as long as object of the right as an heir exists. The right to apply for heirship can, therefore, be exercised at any time after the death of the deceased as long as the right to do so exists. In the circumstances, the trial Court was not correct in its finding that the application filed by the petitioner was barred by limitation.

12. For the above reasons, the petition is allowed in terms of prayer clauses (a) and (b). The matter is remanded to the trial Court for issuance of heirship certificate."

In view of the aforesaid decision, the delay in the present petition is condoned.

10. In view of the material placed on record, the Petition is accepted and proclamation is dispensed with and the petition is allowed in terms of prayer clause (a) and (b) which reads thus:

*"(a) The delay, if any, in filing the Petition may be kindly condoned;
(b) That this Hon'ble Court be pleased to grant the Legal Heirship Certificate certifying that the Petitioner along with the heirs viz., i) Smt. Smita Sachendra Partagalkar and (ii) Shri Kundan Kashinath Naik, as mentioned hereinabove in Paragraph No.5 are the only heirs and legal representatives of the said Deceased under the provisions of the Bombay Regulation Act VIII of 1827;"*

11. Petition is disposed of in terms of the above order, with no order as to costs.

(AARTI SATHE, J.)