

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :-04th April, 2024

FOR COMPLIANCE:

53. TP/602/2024
(ECHCBM02068232023)

P. C. : Shri. Suraj Naik a/w Shri. i/b Atmaram Patade Ld.
Advocate for the Petitioner

1. Ld. Advocate for the petitioner relied upon the commentary in book "Mullas on Mohammedan Law" published in the year 2023(7th edition). He is relied upon the synopsis 26 of Chapter 22(page no. 869). As per the said provision, it is mentioned that if more than one person dies in calamity and it is not proved as to who died first then as per the settled presumption, it is to be presumed that elder dies first. However, such presumption is not applicable to the Muslim Laws and it is pure question of fact and therefore, onus to prove this fact lies on the person who makes such assertion. In view of this, the petitioner to make complete averment and prove this fact that husband of the deceased pre-deceased the deceased upon making such averment, department to issue Citation.

2. Issue Citation within two weeks from today. Issue Notice to the Collector. Issue citation to the non-consenting legal heirs of the deceased, if any. Advocate is directed to take steps and ensure that requisition under chapter XXVI of the Bombay High Court (O.S.) Rules, 1980 (for short "BHC Rules") are complied with.

3. Advocate to take steps regarding Service of General Citation and also effect service upon non-consenting legal heirs, if any as per Rules 399 and

400 of the BHC Rules and also justify the surety of non-consenting legal heirs, if any, and furnish Administration Bond, **for Gross amount**, vide Rule 420 of BHC Rules, within one week thereafter, if there are other legal heir including the petitioner.

4. Office to verify if any cross petition is filed, if cross petition file, then take steps to place before the Hon'ble Court under Rule 407 of BHC Rules.

5. S. O. 09.05.2024

04.04.2024

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