

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

**TESTAMENTARY PETITION NO. 1233 OF 2022
WITH
WILL NO. 478 OF 2022
IN
TESTAMENTARY PETITION NO. 1233 OF 2022**

Pranav Rohit Patel ... Petitioner

And

Jayramdas Muljibhai Patel
alias Jayaramdas Muljibhai Patel ... Deceased

Ms. Sheetal Shah a/w Ms. Dimple D. Bitra i/b Mehta and Girdharlal for the Petitioner.

Mr. Kunal Dwarkadas a/w Ms. Silpa Nair and Ms. Juhi Bahirwani i/b Veritas Legal for the Executor.

CORAM : R.I. CHAGLA, J.

DATED : 17th JUNE, 2022.

ORDER :

1 Heard the learned Counsel for the parties. By praecipe dated 14.06.2022 filed by the Advocate for the Petitioner, they have sought dispensation of the objection raised by the Testamentary Department namely that “Letters of Administration with Will is not maintainable while Executor appointed in Will is in existence”. It is stated that one of the

Executors has passed away on 15.01.2021 and that other Executor is not taking any steps insofar as administration of the estate. To the praecipe, letter dated 07.04.2022 has been enclosed and which is relied upon by the Advocate for the Petitioner to state that the Executor named in the said Will is not acting and/or administering the estate of the deceased. The letter dated 07.04.2022 has been addressed by the Executor to the Advocate for the Petitioner. The learned Advocate appearing for the Petitioner has accordingly submitted that in view of the Executor not heeding to the request of the Petitioner and/or acting by administering the estate, the Petitioner is entitled to file the Testamentary Petition.

2 This application is vehemently opposed by the learned Counsel appearing for the Executor who states that the Executor had administered the estate way back in the year 2014 and which is made clear not only from the letter dated 07.04.2022 addressed by the Executor to the Advocate for the Petitioner as also from the prior letter dated 14.03.2022 wherein the Executor had communicated to the Petitioner that he is not agreeable to handing over the Will of the deceased to the Petitioner or giving his no objection in the form requested by the Petitioner. He has submitted from the said letter it is apparent that the Executor has diligently carried out and concluded all his duties together with the other Executor who has now expired namely his sister Late Mrs.

Renuka P. Patel, between 2011 and 2014 and handed over an aggregate amount of Rs.1,31,88,736.42 to the Petitioner including the preference shares of VFC Industries Private Limited of a value of Rs.40 lakhs, which have been acknowledged by the Petitioner from time to time as per the bequests set out in the said Will.

3 It has further being communicated that by a letter dated 09.09.2014 that the Executors had recorded that they were proceeding to close the estate account created by them in pursuance of execution of the said Will on account of full payment of all amounts due to the Petitioner under the said Will. He has also maintained that the procedure of distribution of estate of the deceased stands concluded as per the said Will. This letter has also been acknowledged by the Petitioner without any demur or protest and the Petitioner has accepted the bequests and enjoyed the same pursuant to the distribution. Thus, it is stated that there is no question of taking any steps towards execution of the said Will and/or administration of the estate of the deceased including but not limited to seeking Letters of Administration of the said Will. It is further stated in the said letter that in the event the Petitioner still goes ahead with taking steps in relation to the said Will, the Executor will be constrained to take legal action against the Petitioner.

4 The learned Counsel for the Executor has accordingly submitted that the Petition cannot be filed by the Petitioner as a beneficiary under the said Will of the deceased, particularly when the Executor has already distributed the estate of the deceased and nothing remains in the estate of the deceased to be distributed to the Petitioner as per said Will.

5 Having considered the submissions of the parties, it does appear from the documents on record including letter dated 07.04.2022 which was enclosed with the praecipe and which has been addressed by the Executor to the Advocate for the Petitioner as well as prior letter dated 14.03.2022 which had not been disclosed in the praecipe and which is addressed by the Executor to the Petitioner that the Executor has taken steps in distributing the estate of the deceased and the Petitioner has taken benefit of the same and acknowledged that she is in receipt of the bequest from time to time. This was way back between the period 2011 and 2014 and it is now not open for the Petitioner to once again attempt to reopen distribution of the estate having enjoyed the benefit of the estate and that too belatedly in the year 2022. In my view the objection raised by the Testamentary Department is well founded namely that Petition for grant of letters of administration with Will is not maintainable while the Executor appointed in Will is very much in existence and has

not consented to such filing of the Petition. In view thereof, the Testamentary Department shall not process the Testamentary Petition No.1233 of 2022 filed by the Petitioner for grant of letters of administration with Will. Accordingly, praecipe/application is disposed of.

(R.I. CHAGLA, J.)