

Amberkar

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

TESTAMENTARY PETITION NO. 5278 OF 2025

Olive Fernandes

.. Deceased

Missionaries of Charity 'Prem Daan' & Anr.

.. Petitioners

.....

- Mr. Manoj Agiwal, Advocate for Petitioners
- Mr. Nikhil Patil, Advocate for both Executors

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2026

P. C.:

1. Mentioned at the time of rising.
2. Heard Mr. Agiwal, learned Advocate for Petitioners and Mr. Patil, learned Advocate for both Executors.
3. Mr. Agiwal persuades the Court to pass appropriate directions in terms of the previous order passed by this Court on 17.04.2026. That order stands duly complied with.
4. When the matter is heard by Court at the time of rising and names of both Executors are pronounced, Mr. Patil, learned Advocate appears for both the Executors. As Mr. Patil enters appears on calling upon the names of the Executors, their presence stands dispensed with today. This is a case where Executors are required to take steps for filing appropriate Petition for obtaining the probate of the Will of the

last Will and Testament of the deceased. Mr. Patil assures the Court that he has instructions to submit that appropriate Testamentary Petition for obtaining probate shall be filed by both the Executors within a period of two weeks from today. Undertaking to that effect shall be given by both the Executors within a period of two weeks from today to the Court on affidavit sworn by them. It is made clear that if the Executors do not take steps as agreed by them, they shall stand automatically removed as Executors which shall be noted by them, in view of the dereliction caused by them previously. However if they file appropriate Petition seeking probate, needless to state that said Petition shall be proceeded further in accordance with law.

5. Mr. Agiwal submits that if the aforesaid order is complied with by the Executors, he be allowed to withdraw the present Petition since it would become infructuous. He is right. Notice of filing of fresh Testamentary Petition by the Executors along with copy thereof shall be given to Mr. Agiwal. Once he receives the details of filing of the said Petition, present Petitioners before me are directed to withdraw the present Petition but it shall be only subject to the filing of the fresh Petition by the Executors. Until the fresh Petition is filed, present Petition shall remain pending.

6. After the present Petition is withdrawn by Petitioners, they shall be entitled to refund of the Court fees. Instead of they following the

long procedure of law for refund of the Court fees, it would be appropriate if the Executors duly represented by Mr. Patil pay the Court fees amount of Rs. 75,000/- to the two Petitioners before me equally. In that case Department shall accept the acknowledgment of the Court fee challan paid in present Petition and transfer the Court fees in the present Testamentary Petition against the fresh Petition which will be filed by Mr. Patil's clients / Executors and apply the same challan for Court fee. This order is passed by consent of both the parties given to Court through their Advocates to ease the convenience of the parties. Bank details of the Petitioners shall be conveyed to Mr Patil by Mr. Agiwal to enable the Executors to transfer the Court fee amount of Rs. 75,000/- to both the Petitioners' accounts equally by NEFT / RTGS mode.

7. Liberty to apply in case of any difficulty. All originals which are filed with the Department in the present Petition shall be made available for Executors in the fresh Petition that will be filed by the Executors. Mr. Patil shall take cognizance of the same at the time of filing the fresh Petition.

8. Liberty to apply.

[MILIND N. JADHAV, J.]

Amberkar

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Digitally signed
by RAVINDRA
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Date:
2026.04.25
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