

Schedule-I of the Petition all the properties and the credits which the deceased possessed of or entitled to at the time of death, which is likely to come to her hands. Insofar as the Petitioner has been able to ascertain or is aware there is no property and credits other than what was specified in schedule-I in the Petition. The Petitioner has further set forth in schedule No.II all the items that by law is allowed to deduct for the purpose of ascertaining the net estate of the deceased.

2 It is further mentioned in the Petition that the assets of the deceased after deducting the items mentioned in schedule-II since the date of the death of the deceased and increased value of assets are of the value of Rs.1,74,98,000/-. It is stated in paragraph 9 of the Petition that the deceased left surviving as her heir and next of kin according to Indian Succession Act, 1956, the legal heirs who are residing at the addresses mentioned in the chart which forms paragraph 9. It is further stated that parents and husband of the deceased predeceased her. There are no other legal heirs.

3 The learned Counsel appearing for the Petitioner has stated that since the witness No.1 to the said Will, Mr. Sudershan Kumar Nayyar, the husband of the deceased, had passed away on 12.11.2011 and the other witness to the said Will, Mr. Ram Bahadur, driver of the deceased

was not traceable, objection has been raised by the Testamentary Department as to the non-availability of the witnesses and that an affidavit requires to be filed of a third party under Rule 384 of the Original Side Rules.

4 The learned Counsel has referred to the affidavit filed by the wife of the Petitioner who was present together with the late husband of the deceased and the driver of the deceased at bungalow No.10, Harbour Estate, Plot No.49/3, Sector 19A, Nerul (East), Navi Mumbai. The deponent Kanika Rajeev Nayyer wife of the Petitioner had personally seen the deceased subscribe her name at the foot of testamentary paper in the English language and declared and published that this is the last Will of deceased. She has identified the name and the signature of the witnesses who had witnessed the Will. She has also identified the name and signature of the deceased to the said Will and she has deposed that deceased was of sound and disposing manner and understanding to the best of her belief and published name of her free will and pleasure. She has identified the date “31st” which was written by the deceased and that the addition did exist at the time of the execution of the said Will. The signature of the deceased was also in the presence on the deponent. She has further stated that deceased got the Will registered with the Sub Registrar of Assurance, Andheri under Serial No.2788 of 2008 on

02.04.2008 in the presence of deponent as well as in the presence of the then two witnesses. The learned Counsel for the Petitioner has accordingly sought for acceptance of the affidavit dated 03.03.2021 affirmed by Mrs. Kanika Rajeev Nayyer w/o Rajeev Nayyer. She has further submitted that the Petition be made absolute by granting probate.

5 The submission of the learned Counsel for the Petitioner are accepted. Hence, the following order :-

- i) The affidavit of Mrs. Kanika Rajeev Nayyer w/o. the Petitioner dated 03.03.2021, is accepted.
- ii) The objection raised by the Testamentary Department is accordingly dispensed.
- iii) The Petition is made absolute by granting probate to the Petitioner having effect throughout the State of Maharashtra.
- iv) The Petition No.901 of 2021 is accordingly disposed of.

(R.I. CHAGLA, J.)

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signed by
WAISHALI
SUSHIL
WAGHMARE
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