

**BEFORE : MR. DILIP S. GURAV,**  
**FIRST ASSISTANT MASTER**  
**Date: 25<sup>th</sup> April, 2024**

**CALLED FOR COMPLIANCE :**

31 TP/16/2024 ) Ms. Chitra Patkar i/b. Nilesh T., Advocate for petitioner  
 )  
 ) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.  
 ) This petition is filed by petitioner, being Sole beneficiary  
 ) named under the Will executed by Kizhakkemadam  
 ) Sivaramakrishnan Vaidyanathan (herein after the same is  
 ) referred to as “Testator), for grant of Letters of  
 ) Administration with Will annexed. Testator said to have  
 ) died on 23<sup>rd</sup> October, 2021 at Mumbai. Petitioner filed the  
 ) copy of death certificate (which is annexed to petition as  
 ) Exhibit-A), identity proof of the testator (which is annexed  
 ) to petition as Exhibit-A-1), Will, petitioner's oath,  
 ) affidavits of legal heirs of the testator.  
 )  
 ) 2. The petitioner has filed petition within prescribed  
 ) limit as per Rule 382 of the Bombay High Court  
 ) (Original Side) Rule, 1980 (for short “Rules”).  
 )  
 ) 3. The testator has not appointed executor to execute the  
 ) will. The petitioner is being Sole beneficiary named under  
 ) the Will. Hence, petition is tenable.  
 )  
 ) 4. Petitioner stated that the testator left behind his last  
 ) Will and Testament which was duly executed at Mumbai  
 ) on 19<sup>th</sup> March, 2009, in English language. The original  
 ) Will is handed in separately for being filed and kept in a  
 ) safe place in the Office of the Prothonotary and Senior  
 ) Master, High Court, Bombay.  
 )  
 ) 5. Petitioner states that parents of testator were  
 ) predeceased to him and testator was survived by legal  
 ) heirs shown in the paragraph No.9 of the petition, as per  
 ) the provisions of the Hindu Succession Act, 1956.  
 ) Testator died leaving behind wife namely Parvati  
 ) Vaidyanathan, daughter namely Jyoti Karthik-petitioner  
 ) herein and son namely Kumar Vaidyanathan. Consent  
 ) Affidavits of Parvati Vaidyanathan dated 28.02.2023 and  
 ) Kumar Vaidyanathan dated 27.02.2023 are on record.  
 ) They have given their consents in the form of Affidavits,  
 ) which are filed on the record by the petitioner .....2

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31 TP/16/2024 ) and consented for the issuance of Letters of  
 ) Administration with Will annexed in favour of the  
 ) petitioner without justifying any surety in respect of their  
 ) shares in the estate of the testator. They have waived the  
 ) service of Citation. The petitioner affirmed that there are  
 ) no other legal heirs of the testator other than mentioned in  
 ) para 9 of the petition.  
 )  
 ) 6. Affidavit of Service of General Citation is filed,  
 ) stating that citation has been affixed on the Notice Board  
 ) of the Hon'ble High Court, Bombay and notice board of  
 ) the Collector's office on 14<sup>th</sup> March, 2024. Notice to  
 ) collector has been sent.  
 )  
 ) 7. The petitioner has filed the affidavit of Shyamrishi R.  
 ) Phatak dated 27.10.2023, one of Attesting Witnesses to  
 ) the Will, in the Form No.102 of the Bombay High Court  
 ) (Original Side) Rules, 1980. Attesting Witness deposed  
 ) that he was present and testator signed on the Testament  
 ) papers in presence of his and another witness. According  
 ) to him, all additions and alteration, in a Will, were existed  
 ) at the time of execution and before signing the Will.  
 ) Hence, there is sufficient compliance of the Rule 383 of  
 ) the Rules. Attesting Witness further deposed as mentioned  
 ) in his Affidavit dated 18<sup>th</sup> April, 2024 on oath in para Nos.  
 ) 5 and 6 which reads as under :  
 )  
 ) "5) I, deponent i.e. Shyamrishi Pathak wrote  
 ) "RHTI of Shyamrishi Pathak" in my handwriting  
 ) and put my right hand thumb impression over the  
 ) same. I wrote "RHTI of V Pathak" and the said  
 ) Vishal Pathak put his right hand thumb  
 ) impression over the same. I say that the Will was  
 ) signed by the above testator in English as his last  
 ) Will before office of Registrar of Assurance at  
 ) Mulund-Nahar (West), Mumbai, 783 Mulund  
 ) Goregaon Link Rd, Mumbai, Maharashtra 400078  
 ) in presence of the said deponent Mr. Shyamrishi R.  
 ) Pathak and Mr. Vishal Pathak after the same was  
 ) read over and explained to him by Registrar and  
 ) had been admittedly perfectly understood and  
 ) approved by him and each of us has at the  
 ) direction and in presence of the .....3

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Testator signed this Will as attesting witness.

6) I say that a medical certificate of Kizhakkemadam Sivaramakrishnan Vaidyanathan issued by Dr. Kantilal Shah was annexed to the Will, with respect to physical and mental fitness to execute documents by Kizhakkemadam Sivaramakrishnan Vaidyanathan”.

Will is duly registered on 19.03.2009 before Joint Sub-Registrar, Mumbai Suburban District Kurla II under registration No. 1365/2009. Ld. Advocate for petitioner has filed Additional Affidavit of one of the Attesting Witnesses dated 18.04.2024 in support of execution of the Will. Hence, enough evidence is on record to accept the execution of the Will and petitioner is succeeded to prove the execution of Will.

8. Ld. Advocate for petitioner has filed Affidavit of petitioner and stated on oath that para 3 of the Affidavit dated 23.04.2024 reads as under :

“My father had made Will having regard to his advanced age, indifferent health and possibility of dissention and dispute regarding the inheritance of his 50% share in the immovable property i.e. Flat No. 1101, Horizon Point, Neptune’s Living point, L.B.S. Marg, Bhandup (West), Mumbai – 400078 so that there should not be change of eruption among members of his family. There are three legal heirs of the property myself Jyoti Karthik alias Lakshmi Vaidyanathan, my mother Parvathy Vaidyanathan and my brother Mr. Kumar Vaidyanathan. My mother and my brother have submitted consent Affidavits that they are aware of the WILL annexed to the property and credits of Kizhakkemadam Sivaramakrishnan Vaidyanathan i.e. my father. I say that there is no eruption in my family regarding the property mentioned in the Will”.

10. Petitioner has executed the administration Bond dated 02.03.2024, in the prescribed format. Hence, following order :

## ORDER

- 1) Petition is granted.
- 2) Office to issue Letters of Administration with Will annexed as per the provisions of the Indian Succession Act, 1925 to the petitioner and upon satisfaction that the administration Bond is properly executed, as per the Rules.
- 3) Before issuance of above said Letters of Administration with Will, the office to verify that there is no cross Petition is pending or caveat is filed. Office to act accordingly.

## FIRST ASSISTANT MASTER