

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 23rd August, 2024

CALLED FOR COMPLIANCE :

37 TP/247/2024) Mr. Vidit D. Kumat, Advocate for petitioner

)

) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being sole legatee
) named under the Will executed by Vishwa Bandhu
) Ramshankar Dubey (herein after the same is referred to as
) “Testator”), for grant of Letters of Administration with
) Will annexed. Testator said to have died on 16.06.2023 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-D),
) Will, petitioner's oath.

)

) 2. The petitioner has filed the present 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 legatee 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 Prayagraj
) on 10.06.2022, in Hindi language. Ld. Advocate for
) petitioner submits that 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. Ld. Advocate for petitioner has filed his Affidavit
) dated 11.03.2024 and stated that he indeed have
) knowledge of both the languages viz. Hindi and English
) languages. Hence, translation at Exhibit – C (annexed to
) petition) in English is true and correct. Hence, this is in
) compliance order dated 10.01.2024 passed by the Hon’ble
) Court in Testamentary Petition NO. 1263 of 2023
) regarding translation of Will in vernacular language.

)

) 5. Petitioner states that parents of testator were
) predeceased to him and testator was survived by legal heirs
) shown in the paragraph No. 8 of the petition, as per the
) provisions of the Hindu Succession Act, 1956.2

CONTD....

– 2 –

37 TP/247/2024

) Testator died issue-less. Testator died leaving behind his
) wife namely Shanti Vishwabandhu Dubey. The petitioner
) affirmed that there are no other legal heirs of the testator
) other than mentioned in para No. 8 of the petition.

) 6. Ld. Advocate for petitioner submits that as mentioned
) in para No. 8 of the petition on oath that wife of testator
) namely Shanti V. Dubey was leaving separately from the
) testator and his family since April 1999, in relation to
) which the said wife of the testator had filed M.P. No. 419
) of 2005 for judicial separation in District Court, Thane.
) Said petition was disposed of on 16.12.2008 for non-
) prosecution, after which till date petitioner or family of
) testator does not have clue about the whereabouts of the
) wife of the testator. Ld. Advocate for petitioner has
) annexed copy of the case status as Exhibit 'H' to the
) petition.

) 7. Ld. Advocate for petitioner submits that since
) petitioner does not known whereabouts of the testator's
) wife since last 25-30 years approximately. Ld. Advocate
) for petitioner further submits that as mentioned in
) Affidavit filed by petitioner dated 03.04.2024 in support of
) Chamber order that during the lifetime of the testator, the
) testator never mentioned any knowledge relating to the
) whereabouts of his wife since there is no cordial
) relationships between them.

) 7. The petitioner states that she is not aware about the
) whereabouts of said Shanti V. Dubey, wife of the testator.
) Hence, Chamber Order, having No. 186 of 2024 has been
) taken out to serve the Citation her by publishing citation in
) the daily newspapers namely, "Free Press Journal" in
) English language and "Yashobhoomi" in Hindi language
) on 31.05.2024. Accordingly, Affidavit of Service has been
) filed by Birendra Gupta dated 05.16.2024, which is on
) record. Hence, service is effected on her as per Rule 400
) of the Bombay High Court (Original Side) Rules, 1980.

) 8. Moreover, citation was dispatched to Shanti
) Vishwabandhu Dubey on 23.07.2024 through office of
) Sheriff of Bombay. Affidavit of Service filed by S. J.
) Dhamapurkar, Bailiff and Clerk dated 13.08.2024 is on
) record.

.....3

CONTD...

– 3 –

37 TP/247/2024

) He deposed that the citation dispatched to wife of the
) testator returned back with remarks 'item returned
) unclaimed'. Ld. Advocate submits that upon perusing the
) envelop which was returned back, there is endorsement by
) postal department that intimation has been sent her on
) 24.07.2024. Ld. Advocate for petitioner submits that
) unclaimed service is good service. Hence, once again wife
) of testator namely Shanti Vishwabandhu Dubey was duly
) served by office of sheriff as per Rules 399 of the Bombay
) High Court (Original Side) Rules, 1980. Citation was duly
) served to wife of testator namely Shanti V. Dubey by office
) of Sheriff, Mumbai as per Rules 399 as well as 400 of the
) Bombay High Court (Original Side) Rules, 1980.
) However, she had not resist the petition till date. Hence,
) this petition is uncontested petition and proceeded with
) accordingly.

) 9. 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 06.03.2024. Notice to collector
) has been sent.

) 10. The petitioner has filed the Affidavit of Azad
) Dharmaraj Mishra dated 23.08.2023 and 18.06.2024, one
) of Attesting Witness to the Will, in the Form No.102 of
) the Bombay High Court (Original Side) Rules, 1980.
) Attesting witness deposed that witness 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 Bombay High Court
) (Original Side) Rules, 1980. Will is duly notarized before
) P. K. Dwivedi, Notary. Attesting witness further deposed
) that at the time of execution of the will testator was of
) sound and disposing mind, memory and understanding.
) Hence, enough evidence is on record to accept the
) execution of the Will and petitioner is succeeded to prove
) the execution of Will.

) 11. Properties mentioned in the schedule of the petition
) are referred in the Will as well as in residuals clause of the
) Will. Ld. Advocate for petitioner submits that4

CONTD....

– 4 –

37 TP/247/2024

) as mentioned in para No. 6 of the petition, which reads as
) under :

) “That the petitioner has truly set forth in Schedule I
) hereto annexed and marked Exhibit “F” all the
) properties and credits which the said deceased died
) possessed of or entitled to at the time of his death,
) which have or are likely to come to the petitioners’
) hands. So far as the petitioner has been able to
) ascertain or is aware that the said deceased left no
) other movable and immovable properties other than
) those specified in Schedule – I annexed hereto. That
) the relevant revenue record pertaining to the property
) mentioned in Schedule I is hereto annexed and marked
) as Exhibit – “G”.

) The Ld. Advocate for the petitioner submitted that
) properties available to the testator at the time of his death
) are mentioned in the Schedule – I of the petition.

) Ld. Advocate for petitioner submits that as per Will
) in Para Nos. 1 and 6, the agricultural land which was
) mentioned in Schedule I of the petition was bequeathed to
) petitioner.

) 12. As per requisition No. 1 raised in the order dated
) 13.06.2024, which reads as “Properties mentioned in the
) Will not shown in the Schedule I annexed to the petition
) viz. in the Will, there are other some movable properties
) including bank locker which was in the different bank.
) Advocate to explain”.

) Ld. Advocate for petitioner has filed Affidavit of
) petitioner dated 18.06.2024, she stated on oath that
) diligent efforts made to locate the bank lockers and gold
) ornaments specified in para No. 10 of the Will was taken
) but despite through searches and enquirers at the various
) banks where the testator would have an accounts. The
) petitioner has been unable to trace any such bank locker or
) gold ornaments which are in the name of testator. The
) property which was petitioner have been identified or
) mentioned in Schedule I of the petition. Ld. Advocate for
) petitioner submits that property mentioned in the Schedule
) I of the petition and as per para No. 5, same has been
) bequeathed to petitioner herein.

.....5

CONTD...

– 5 –

37 TP/247/2024

13. As per requisition No. 2 raised in the order dated 13.06.2024, which reads as “To comply with the provisions of rule 383 of the Bombay High Court (Original Side) Rules, 1980 by filing Affidavit of Attesting Witness to the Will”.

Ld. Advocate for petitioner has filed Additional Affidavit of Azad Dharmaraj Mishra, Attesting Witness dated 18.06.2024 in support of execution of the Will.

14. Petitioner has executed the Administration Bond dated 13th October, 2023, 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 and also Court fees paid as per valuation of property in Schedule I of the petition. Office to act accordingly.

23.08.2024

FIRST ASSISTANT MASTER