

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 4th July, 2024**

CALLED FOR COMPLIANCE :

38 TP/284/2024) Ms. Maharukh Adenwalla, Advocate for petitioner

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1. Perused Petition. Heard Ld. Advocate for petitioners. This petition is filed by petitioners, both are being legatees named under the Will executed by Aleyamma David Mathew (herein after the same is referred to as “Testatrix”), for grant of Letters of Administration with Will annexed. Testatrix said to have died on 07.11.2020 at Mumbai. Petitioners have filed the copy of death certificates (which is annexed to petition as Exhibit-A), identity proof of the testatrix (which is annexed to petition at page No. 28), Will, petitioner's oath, Affidavits of legal heirs of the testatrix.

2. The petitioners have filed petition within prescribed limit as per Rule 382 of the Bombay High Court (Original Side) Rule, 1980 (for short “Rules”).

3. The testatrix has not appointed executor to execute the Will. The petitioners are being legatees named under the Will. Hence, petition is tenable.

4. Petitioners stated that the testatrix left behind her last Will and Testament which was duly executed at Mumbai on 15.09.2018, in English 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.

5. Petitioners have stated that husband of testatrix was predeceased to her and testatrix was survived by legal heirs shown in the paragraph No. 9 of the petition, as per the provisions of the Indian Succession Act, 1925 applicable to Christian. Husband of testatrix namely David C. Mathew died on 25.10.2020. Testatrix died leaving behind only son namely Robby David Mathew – petitioner No. 2 and only daughter namely Mini Elizabeth Mathew – Petitioner No. 1 herein.

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) The petitioner affirmed that testatrix has left surviving as
) her only heirs and next-of-kin which was 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 05.03.2024. Notice to collector
) has been sent.

) 7. The petitioners have filed the Affidavits of Mrs. Savita
) Thadani and Swaroop Sadh both dated 25.07.2023, both
) being the Attesting Witnesses to the Will, in the Form
) No.102 of the Bombay High Court (Original Side) Rules,
) 1980. Attesting witnesses deposed that they were present
) and testatrix signed on the Testament papers in presence
) of both of them. According to them, 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. They have further deposed
) that at the time of execution of the Will, testatrix 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.

) 8. Properties mentioned in the Schedule - I of the
) petition are referred in the Will. Ld. Advocate for
) petitioner submits that as mentioned in para 6 of the
) petition which reads as under :

) "That the petitioners have truly set forth in Schedule
) No.I, hereto annexed and marked Exhibit 'C', all the
) property and credits which the said deceased died
) possessed or or entitled to at the time of her death,
) which have or are likely to come to their hands".

) The Ld. Advocate for the petitioners submitted that
) properties available to the testatrix at the time of her death
) is mentioned in the Schedule - I of the petition.

) 9. As per order dated 23.04.2024 requisitions has been
) raised, which reads as under :

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“Heard Ld. Advocate for petitioner. In the Will, there are some beneficiaries hence, Advocate for petitioner to file consent Affidavits of the said beneficiaries. At the request of Ld. Advocate for petitioner, matter is adjourned till 14.06.2024 for compliance”.

Ld. Advocate for petitioner has filed Affidavit of Malaika Mathew Chawla dated 15.06.2024 which is on record. She has given her consent in the form of Affidavit, which is filed on the record by the petitioners and consented for the issuance of Letters of Administration with Will annexed in favour of the petitioners without justifying any surety in respect of her share in the estate of the testatrix. She has waived the service of Citation.

10. Ld. Advocate for petitioners have filed Affidavit of petitioner No. 1, Mini Elizabeth Mathew dated 06.06.2024 and stated on oath that Safe Deposit Locker No. 106A, with the Greater Bombay Co-operative Bank Ltd., Bandra, was in the joint name with Testatrix. She stated on oath that the jewellery which was mentioned at Sr. No. 9 of the Schedule I of this petition was found in the said locker. She stated further on oath that she had closed the said locker.

11. Petitioner Nos. 1 and 2 have executed the Administration Bond dated 22.03.2024 and 05.06.2024, 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.

04.07.2024

FIRST ASSISTANT MASTER

