

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 11th November 2024

CALLED FOR COMPLIANCE :

22 TP/348/2024) Mr. D. R. Pandey, 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
) Mohamedali Valimohamed Kotadia (herein after the
) same is referred to as “Testator”), for grant of Letters
) of Administration with Will annexed. Testator said to
) have died on 13.08.2017 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-A1), Will, petitioner's
) oath.
)
) 2. The petitioner has explained the delay in para
) No.10 of the petition 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 17.07.2014, in English language. Ld.
) Advocate for petitioner submits that the original Will
) No. 140 of 2024 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. 8 of the petition, as
) per the provisions of the Mohammedan Law applicable
) to Shia Muslim. Ld. Advocate for petitioner submits
) that testator married at once with Sakkarkhanu
) Mohamedali Kotadia. She died on 29.09.2014 and her
) death certificate has been annexed to the petition as
) Exhibit – “D”. Testator died leaving behind only son
) namely Nazir Mohamedali Kotadia – petitioner2

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herein. Testator have no daughter and no other son. The petitioner stated on oath that there are no other legal heirs of testator as per Mohammedan Law (applicable to Shia Muslim) other than mentioned in para No. 8 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 26.02.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Pooja Darji dated 24.07.2024, 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 she was present and testator signed in Gujarati language on the Testament papers in presence of her and another witness. According to her, 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.

Attesting Witness deposed that Will was explained to the testator by Attesting Witnesses at the time of execution execution of the Will. He understood the same as mentioned in para No. 10 of the Will, which reads as "Whatever stated hereinabove is true and correct to the best of my knowledge and belief, and is stated sincerely and honestly and after understanding it properly and I have put my signature in the presence of below mentioned witnesses". Hence, there is sufficient compliance of 419. Will was duly registered before the Joint Sub-Registrar, Borivali No. 2, under registration No. BRL/2/III/5358/2014.

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.

8. Properties mentioned in the schedule of the petition are referred in the Will.

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Ld. Advocate for petitioner submits that as mentioned in para No. 6 of the petition, which reads as under :

“The Petitioner has truly set forth in Schedule No. I, hereto annexed and marked Exhibit “C” all the property and credits which the deceased died possessed of or entitled to at the time of his death, which have or are likely to come to his hands”.

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 properties which are available at the time of death of testator are mentioned in Schedule – I of the petition and hence, other properties which was not available at the time of death viz. Cash, bank account, gold jewellery are not mentioned in Schedule - I of the petition. Statement made by the Ld. Advocate for petitioner is accepted.

9. Ld Advocate for petitioner undertakes to correct the spelling of sect of the petitioner in the cause title and upload the corrected the petition on the official website of the Bombay High Court. The said undertaking is accepted.

10. Petitioner has executed the administration Bond dated 05.04.2024 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.

