

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 19th April, 2024**

CALLED FOR COMPLIANCE :

25 TP/393/2024) Mr. Madhusudan Gawde, Advocate for petitioner

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-) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
-) This petition is filed by petitioner, being one of the
-) legatees named under the Joint Will executed by Mavji
-) Bhimshi Chheda and Vimlaben Mavji Chheda (herein
-) after the same is referred to as “Testator and Testatrix”),
-) for grant of Letters of Administration with Will annexed.
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-) 2. Testator said to have died on 8th August, 2022 at Tal
-) Mandvi, Gujarat. 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).
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-) 3. Testatrix said to have died on 20th September, 2023 at
-) Mumbai. Petitioner filed the copy of death certificate
-) (which is annexed to petition as Exhibit-B), identity proof
-) of the testatrix (which is annexed to petition as Exhibit-B-
-) 1), Joint Will (along with its official translation),
-) petitioner's oath, affidavits of legal heirs of the “testator
-) and testatrix”.
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-) 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”).
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-) 3. The “testator and testatrix” have not appointed
-) executor to execute the said Joint Will. The petitioner
-) being one of the legatees named under the Will. Hence,
-) petition is tenable.
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-) 4. Petitioner stated that the “testator and testatrix” left
-) behind their last Joint Will and Testament which was duly
-) executed at Mumbai on 9th April, 2017, in Gujarati
-) language. Its official translation is filed on the record. 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.
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5. Petitioner states that mother and father of testator were predeceased to him. "Testator and testatrix" was survived by legal heirs shown in the paragraph No. 11 of the petition, as per the provisions of the Hindu Succession Act, 1956. "Testator and testatrix" were husband and wife. They died leaving behind three daughters and one son. Three daughters are namely Jyoti Savla, Rashmi Shah, Fanny Shah and only son namely Muulraj Chheda (petitioner herein). Joint Consent Affidavit of Jyoti Savla, Rashmi Shah and Fanny Shah dated 6th November, 2023 is on record. They have given their consents in form of Affidavits, which is filed on the record by the petitioner 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 and testatrix". They have waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the "testator and testatrix" other than mentioned in paragraph No.11 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 18th March, 2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Manish Kantilal Dedhia dated 6th November, 2023, 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 he was present and "testator and testatrix" 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. He further deposed that at the time of execution of the Will, "testator and 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

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succeeded to prove the execution of Will.

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8. Properties mentioned in the Schedule I of the petition are referred in the Will. The Ld. Advocate for the petitioner submitted that properties available to the testator at the time of their death are mentioned in the schedule I of the petition.

9. In the Will, there is directions to the petitioners to pay total Rs.25,00,000/- (Twenty Five Lakhs Rupees) Jyoti Ramesh Savla and Ujjwal Savla (Mamera). Ld. Advocate for petitioner states that petitioner had already paid these amount as per Will. Also, as per Will para Nos. 2 and 3 of the Will, which reads as under :

“2) We have second daughter viz. Rashmi Kiran Shah (Rambhia) who has one daughter. She is unmarried. The sum of Rupees 15 lakh in full shall be given for ‘mamera’ at the time of marriage occasion and the sum of Rupees 15 lakh shall be given to Rashmiben for marriage. We both have taken decision as per the situation prevailing at that time.

3) Out third daughter viz. Fanny Chandresh Shah (Maru) has two daughters and they both are unmarried. The sum of Rupees 15 lakh shall be given for ‘mamera’ for marriage of first daughter Feya and the sum of Rupees 15 lakh shall be given to Fannyben for marriage. The sum of Rupees 15 lakh shall be given for ‘mamera’ for marriage of second daughter Fiona and the sum of Rupees 15 lakhs shall be given to Fannyben for marriage. We both have taken decision a per situation prevailing at that time”.

Ld. Advocates for petitioners on instructions from petitioners submit that petitioner undertakes to comply directions as above and will pay sums as directed above in Joint Will. Ld. Advocate for petitioners also submitted that petitioners has filed ‘Administrator’s Oath’ dated 6th November, 2023 and stated on oath that he will faithfully administer the property by paying first debts of “testator and testatrix” and then the “Legacies” as per joint Will.

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The said undertaking is accepted.

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10. Ld. Advocate for the petitioner submitted that as mentioned in paragraph No.13, petition nos. E-filing no. 5935-2023 and E-filing no. 13128/2023 have been withdrawn.

11. Petitioner has executed the Administration Bond dated 1st April, 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.

19.04.2024

FIRST ASSISTANT MASTER