

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 27th August, 2024**

CALLED FOR COMPLIANCE :

21 TP/398/2024) Ms. Shilpa More, 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 Rama Apurva Desai (herein after the same is referred to as “Testatrix”), for grant of Letters of Administration with Will annexed. Testatrix said to have died on 16th January, 2022 at Mumbai. Petitioner filed the copy of death certificate (which is annexed to petition as Exhibit-A), identity proof of the testatrix (which is annexed to petition as Exhibit-A-1), Will, Petitioner's oath, Affidavits of legal heirs of the testatrix.

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 testatrix has not appointed Executor to execute the Will. The petitioner is being sole beneficiary named under the the Will. Hence, petition is tenable.

4. Petitioner stated that the testatrix left behind her last Will and Testament which was duly executed at Mumbai on 21st May, 2013, 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. Petitioner states that parents of testatrix were predeceased to him and testatrix was survived by legal heirs shown in the paragraph No.9 of the petition, as per the provisions of the Hindu Succession Act, 1956. Husband of testatrix namely Apurva Desai died on 13th October, 2015 and death certificate of husband of testatrix is annexed as Exhibit “E”. Testatrix died leaving behind only son namely Utpal Apurva Desai. Testatrix had no any other son and daughter.

CONTD....

– 2 –

21 TP/398/2024

) The petitioner affirmed that there are no other legal heirs
) of the testatrix other than mentioned in para no. 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 16th March, 2024. Notice to
) collector has been sent.

) 7. The petitioner has filed the Affidavit and Additional
) Affidavits of Dr. Saumil Desai dated 3rd June, 23 and 29th
) July, 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 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. Attesting witness
) deposed that Will was read over and explained to testatrix
) by him in presence of another Attesting Witness. Will is
) duly notarized before peter J. Coutinho, Notary
) Government of India, under Notary serial No.
) 01037/2013. Attesting witness 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 of the petition
) are referred in the Will. Ld. Advocate for the petitioner
) submits that as mentioned in para no. 6 of the petition,
) which read as under :

) "That the petitioner has truly set forth in Schedule
) No. I hereto annexed and marked Exhibit – "C" all
) the properties and credits with the deceased died of
) or entitled to at the time of hear death, which have or
) are likely to come to her hands. The petitioner states
) that the deceased had disposed of other properties
) during her lifetime. So far as the Petitioner3

CONTD....

– 3 –

21 TP/398/2024

) is aware that the deceased do not have any other
) properties”.

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

) 9. As per requisition No. 1 raised in the order dated
) 09.07.2024, which reads as “To comply with the
) provisions of rules 383 and 419 of the Bombay High
) Court (Original Side) Rules, 1980”.

) Ld. Advocate for the petitioner has filed Additional
) Affidavits of Dr. Saumil Desai dated 29th July, 2024, one
) of Attesting Witness to the Will in support of execution of
) will and complied with the same.

) 10. As per requisition No. 2 raised in the order dated
) 09.07.2024, which reads as “To check Schedule I annexed
) to the petition”.

) Ld. Advocate for the petitioner has filed Affidavit of
) petitioner dated 29th July, 2024 and stated on oath that
) after demise of his father namely Apurva Shrikant Desai,
) testatrix has become 100 % owner. Hence, details
) mentioned in Schedule - I of the petition is correct.

) 11. As per requisition No. 3 raised in the order dated
) 09.07.2024, which reads as “Properties mentioned in the
) Will and not shown in the Schedule”.

) Ld. Advocate for the petitioner has filed Affidavit of
) petitioner dated 29th July, 2024 and given explanation in
) para No. 2 of therein, which read as under :

) “That I say that at the time of death of the RAMA
) APURVA DESAI, except flat No.A-401, Gardenia
) Valley of Flowers, Thakur village Kandivali (East),
) Mumbai – 400101 (herein after called and referred
) to as “The said Flat”) all other properties which
) were mentioned in the Will were “NIL”. The
) physical shares and debentures and Mutual Funds
) were sold off and the money used for normal
) household expenses as well as medical expenses of
) both Mr. Apurva Shrikant Desai and Rama Apurva
) Desai. Similarly, the Fixed Deposits matured and
)

.....4

– 4 –

21 TP/398/2024

The ornaments and jewellery were given to her daughter in -law Purvi Utpal Desai. The bank account at HDFC Bank is still existing but there are no transactions in it. (The balance on the day she died was Rs.77,191.04)’’.

12. Petitioner has executed the Administration Bond dated 23rd May, 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

27.08.2024

FIRST ASSISTANT MASTER