

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 9th September, 2024

CALLED FOR COMPLIANCE :

22 TP/416/2024) Mr. Dinesh G. Tripathi, 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 Will executed by Mariam
) Bernard Parmar (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 23.06.2021 at
) Mumbai. Petitioner has 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 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 one of the legatees named
) under 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 11.02.2021, 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 husband of testatrix were
) predeceased to her and testatrix was survived by legal
) heirs shown in the paragraph No. 6 of the petition, as per
) the provisions of the Indian Succession Act, applicable to
) Roman Catholic Christians. Husband of testatrix namely
) Bernard L. Parmar died on 30.10.2012. Testatrix died
) leaving behind one son and two married daughters.
) Testatrix’s son namely Surya Bernard Parmar – petitioner
) herein and two married daughters namely Babita Kiran
) Solanki, Leena Gautam Julka.
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Consent Affidavits of Babita Kiran Solanki, Leena Gautam Julka both dated 27.01.2023 are on record. They have given their consents in the form of Affidavits, which are 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 testatrix. They have waived the Service of Citation. The petitioner affirmed that there are no other legal heirs of the testatrix other than para No. 6 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 03.06.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavits of Prasad Nandkumar Vedpathak and Melvyn Camil D'silva both dated 27.01.2023 and Additional Affidavit of Melvyn Camil D'silva dated 29.08.2024, both are beings 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 put her thumb impression 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. Attesting Witnesses (Melvyn Camil D'silva) deposed that testatrix was illiterate and incapable to read and write. She expressed her desire that she wants to bequeath her property by way of Will. She asked and instructed to draft the same. As per instructions he got, drafted her Will in English language and character. He read over the Will to her. He further deposed that Advocate J. P. Tripathi also explained the said Will to testatrix in Hindi language. She having gone through the contents being satisfied that the same is as per her wish, will and accord, she put her left hand thumb impression on the Will. Hence, there is sufficient compliance of Rule 419 of the Bombay High Court (Original Side) Rules, 1980. Will is duly registered before Joint Sub-Registrar, Andheri - I, under

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registration No. BDR/1/2271/2021. 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 petitioner submits that as mentioned in para No. 7 of the petition, which reads as under :

“That the Petitioner has truly set forth in Schedule No.I, hereto annexed marked Exhibit “C”, all the properties and credits which the deceased died, possessed of or entitled to at the time of her death, which have or are likely to come to her hands in respect of which the Letters of Administration with WILL is required for the purposes of claiming said properties”.

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

9. As per requisition No. 1 raised in the order dated 31.07.2024, which reads as “To check bank account mentioned in the Will and Schedule of petition”.

Ld. Advocate for the petitioner has carried out the corrections on 03.09.2024 in the petition and complied with the same.

10. As per requisition No. 2 raised in the order dated 31.07.2024, which reads as “As per Will, there is locker. Hence, inventory is required to be carried out”.

Ld. Advocate for petitioner has filed Affidavit of petitioner dated 29.08.2024. He stated on oath that the locker mentioned in the Will was disposed of by the testatrix during her life time and said locker did not exists at the time of her death.

11. As per requisition No. 3 raised in the order dated 31.07.2024, which reads as “To check page No. 3 of the Will, the words ‘them’ and ‘us’. Advocate to explain”.

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Ld. Advocate for petitioner has filed Affidavit of petitioner dated 29.08.2024 and explained that due to some inadvertence and clerical / typing mistakes words ‘them’ and ‘us’ has been mentioned in the Will.

12. As per requisition No. 4 raised in the order dated 31.07.2024, 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 petitioner has filed Affidavit of Melvyn D’silva in support of execution of the Will and complied with the Rules 383 and 419 of the Bombay High Court (Original Side) Rules, 1980.

13. As per requisition No. 5 raised in the order dated 31.07.2024, which reads as “As per Will, there is no averment regarding daughter”.

Ld. Advocate for petitioner has filed Affidavit of petitioner dated 29.08.2024. He stated on oath that testatrix may not want to bequeath her property to her married daughters and therefore, she might not made any averment about her daughters. He further submits that both the daughters have filed their respective Consent Affidavits in favour of petitioner.

14. As per requisition No. 6 raised in the order dated 31.07.2024, which reads as “Notice to Collector”.

Ld. Advocate for petitioner has complied with the requisition regarding Notice to Collector on 04.09.2024.

15. Petitioner has executed the Administration Bond dated 01.05.2024, 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.

09.09.2024

FIRST ASSISTANT MASTER

