

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 31st July, 2024**

CALLED FOR COMPLIANCE :

23 TP/924/2024) Ms. Nazima Malik a/w. Mr. Shaikh Makhdum, Advocate
) for petitioner
)

-) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being legatee named
) under the Will executed by Huseina Moiz Mithaiwala
) (herein after the same is referred to as “Testatrix”), for
) grant of Letters of Administration with Will annexed.
) Testatrix said to have died on 6th December, 2022 at State
) of Maryland, U.S.A. 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 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 legatee 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 Mary
) Land, USA on 3rd July, 2014, 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 was
) 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 Mohammedan Law applicable to
) Sunni Muslim. Husband of testatrix namely Moiz I.
) Mithaiwala died on 3rd September, 2006 and his death
) certificate is annexed to the petition as EX-D. Testatrix
) died leaving behind only son namely2

7. The petitioner has filed the Affidavit of Mubina Arshad Sayed dated 18.05.2023, 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 she was present and testatrix signed 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. She deposed that on the 3rd day of July, 2014, she was present together with Mr. Arif Moiz Mithaiwala, at the office of Notary Public. Then they saw that the testatrix set and subscribed her name and signature along with date at the foot of the testamentary paper in English language. Will is duly notarized before HAEKANG Yoo, Notary Public, Montgomery County, Maryland on 3rd July, 2014. Ld. Advocate submits that petitioner is Sunni Muslim and therefore, effect of bequeathed to attesting witness is not applicable to her. She 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.

CONTD...

– 3 –

23 TP/924/2024

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. 8 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 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 the petitioner’s hands”.

Hence, 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. Petitioner has executed the Administration Bond dated 16th 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

31.07.2024

FIRST ASSISTANT MASTER