

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 5th September, 2024

CALLED FOR COMPLIANCE :

17 TP/1037/2024) Mr. Ansari Ayaz Ahmed i/b. Ravi Kumar Mishra,
) Advocate for petitioner
)
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being beneficiary
) named under the Will executed by Rosy Peter Sequeria
) (herein after the same is referred to as “Testatrix”), for
) grant of Letters of Administration with Will annexed.
) Testatrix said to have died on 17.10.2021 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-B),
) 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 beneficiary 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 16.10.2019, 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 her and testatrix was survived by legal
) heirs shown in the paragraph No. 9 of the petition, as
) per the provisions of the Indian Succession Act, 1925
) applicable to Christian. Testatrix died as spinster.
) Testatrix has only three sisters namely Philomena
) D’silva, Maria Rodricks, Espy Merchant and had no
) brother. One sister of testatrix namely2

17 TP/1037/2024

Espy Merchant died on 23.05.2011. She died leaving behind his son namely Neil Martins – petitioner herein. Ld. Advocate for petitioner has carried out the amendment on 06.08.2024 and stated on oath that testatrix has no agantes and cognates. Furthermore, Philomena D'silva and Maria Rodricks have stated on oath in their Affidavits that there are no other legal heirs of the testatrix other than mentioned in para No. 9 of the petition.

Joint Consent Affidavits of Philomena D'silva and Maria Rodricks dated 31.08.2023 is on record. They have given their consents in the form of Affidavit, 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 testatrix. They have waived the service of Citation. They have stated on oath that both of them i.e. Maria Rodricks and Philomena D'silva and Neil Martin – petitioners are only legal heirs of testatrix. Testatrix left no any other legal heirs other than legal heirs mentioned in para No. 9 of the petition. They further deposed that their parents were predeceased to them. Another real sister namely Espy Merchant died on 23.05.2011, leaving behind her son namely Neil Martin – petitioner herein.

6. Ld. Advocate for petitioner submits that petitioner has filed Affidavit dated 02.09.2024 and stated on oath that there is no siblings to him and he is sole legal heir of his parents. Also, he has given clarification in para Nos. 2 and 3 of the said Affidavit, regarding his surname.

7. 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 12.07.2024. Notice to collector has been sent.

8. The petitioner has filed the affidavit of Darell Noel D'silva dated 31.08.2023, one of Attesting Witness to the Will, in the Form No.102 of the Bombay3

CONTD....

- 3 -

17 TP/1037/2024

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 on 16.10.2019, he was present together with the Miss. Rosy Peter Sequire (Testatrix) at the Joint Sub-Registrar's office at Andheri and the said Will was signed (in English language) and executed by testatrix. Will is duly registered before Joint Sub-Registrar, Andheri No. 4 under registration No. BDR-15-III/5102/2019. 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.

9. Properties mentioned in the schedule of the petition are referred in the Will. Ld. Advocate for petitioner submits that as mentioned in para 6 of the petition, which reads as under :

“That Petitioner has truly set forth in Schedule - “I” hereto annexed and marked as Exhibit – “E”, all the properties and credits which the deceased possessed of or entitled to at the time of her death, which have or are likely to come to her hands. The said property in respect of which the Letters of Administration with Will is required are of the value of Rs. 1,12,01,169/- and the petitioner accordingly paid the Court Fee of Rs.75,000/-”.

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.

10. As per requisition No. 1 raised in the order dated 25.07.2024, which reads as “To explain the legal heirs of deceased as per rule 397 of the Bombay High Court (Original Side) Rules, 1980”.

17 TP/1037/2024)

Ld. Advocate for petitioner has carried out amendment and complied with the same. Petitioner has stated on oath that in para No. 9 except legal heirs mentioned in para No. 9 of the petition, testatrix had left no other legal heir.

11. Petitioner has executed the Administration Bond dated 18.06.2024, 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.

05.09.2024

FIRST ASSISTANT MASTER