

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 24th October, 2024**

CALLED FOR COMPLIANCE :

25 TP/1042/2024) Mr. Suraj Tiwari i/b. S. A. Abhyankar, Advocate for
) petitioner
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) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being sole legatee
) named under the Will executed by Manohar Atmaram
) Oraskar (herein after the same is referred to as
) “Testator”), for grant of Letters of Administration with
) Will annexed. Testator said to have died on 22.02.2021
) at Mumbai. 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-A1), Will, petitioner's oath, Affidavits of legal
) heirs of the testator.
)
) 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 testator has not appointed Executor to execute
) the Will. The petitioner is being sole legatee named
) under the Will. Hence, petition is tenable.
)
) 4. Petitioner stated that the testator left behind his last
) Will and Testament which was duly executed at
) Mumbai on 08.07.2019, in Marathi language. Ld.
) Advocate for petitioner submits that the original Will
) No. 347 of 2024 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.
) Ld. Advocate for petitioner has filed his Affidavit dated
) 19.10.2024 which is on record. He deposed that he
) knows both the languages i.e. Marathi and English and
) he had translated the Will from Marathi to English
) which is true and correct. Hence, there is sufficient
) compliance of order dated 10.01.2024 passed by the
) Hon’ble Court in Testamentary Petition No. 1263 of
) 2023.2

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5. Petitioner states that parents of testator were predeceased to him and testator was survived by legal heirs shown in the paragraph No. 9 of the petition, as per the provisions of the Hindu Succession Act, 1956. Testator died leaving behind his wife namely Meena Manohar Oraskar and three sons. Testator's three sons are namely Sachin Manohar Oraskar – petitioner herein, Sandeep Manohar Oraskar and Sudhir Manohar Oraskar and had no daughter. Consent Affidavits of Meena Manohar Oraskar and Sandeep Manohar Oraskar dated 08.07.2023 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 testator. They have waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the testator other than mentioned in para No. 9 of the petition.

6. Citation to Sudhir Manohar Oraskar has been personally served through Sheriff's office, Mumbai. Joint Affidavit of Service dated 27.08.2024 filed by Pravin V. Kajarekar, Bailiff and Sachin Manohar Oraskar – petitioner herein is on record. As per Bailiff report dated 31.07.2024, citation alongwith true copy of petition was duly served by the said Bailiff on 30.07.2024 at about 7.45 a.m. upon said Sudhir Manohar Oraskar, son of testator. Said Sudhir Oraskar had accepted the citation, copy of petition and signed on the original citation. Hence, citation has been duly served by Bailiff personally to Sudhir M. Oraskar as per Rule 399 of the Bombay High Court (Original Side) Rules, 1980. However, he did not resist the petition till date. Therefore, this petition is proceeded as uncontested Petition.

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 14.06.2024.3

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) Notice to collector has been sent.

) 8. The petitioner has filed the Affidavits of Sushma
) Pradip Bamne and Neha Paresh Vadhar both dated
) 10.07.2023, both the Attesting Witnesses to the Will, in
) the Form No.102 of the Bombay High Court (Original
) Side) Rules, 1980 and Additional Affidavit of Sushma
) Pradip Bamne dated 05.09.2024. Attesting Witnesses
) deposed that they were present and testator signed 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. Will is duly registered before Joint
) Sub-Registrar, Borivali No. 5, under registration No.
) BRL-5/III/8922/2019. They further deposed that at the
) time of execution of the Will, testator 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 - I of the
) petition are referred in the Will. Ld. Advocate for
) petitioner submits that as mentioned in para No. 11 of
) the petition, which reads as under :

) “That the Petitioner has truly set forth in Schedule
) hereto annexed and marked Exhibit – C all the
) property and credits which the deceased died
) possessed of or entitled to at the time of his death,
) which have or are likely to come to the petitioner’s
) hands. So far as the Petitioner has been able to
) ascertain or is aware, there are no property and
) credits other than what are specified in Schedule
) No. I attached to the petition”.

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

) 10. As per requisition Nos. 1 to 3 raised in the order
) dated 02.09.2024, which reads as “(1) In para No. 9 of
) the petition address of all legal heirs not shown. Also,

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age of Sudhir Oraskar is not shown.

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(2) To check prayer clause. (3) Verification clause blank”.

Ld. Advocate for petitioner has carried out amendment on 19.09.2024 and complied with the same.

11. As per requisition No. 4 raised in the order dated 02.09.2024, which reads as “As per para No. 3 of the Will, Ld. Advocate for petitioner to explain whether “Executor by tenure” is appointed by deceased under the Will”.

Ld. Advocate for petitioner submits that as per Will, there is no specific appointment of Executor by name made by the testator under the Will. Hence, petitioner has filed Letters of Administration with Will as petitioner being Sole legatee named under the Will.

12. As per requisition No. 5 raised in the order dated 02.09.2024, which reads as “To comply with the provisions of Rule 383 of the Bombay High Court (Original Side) Rules, 1980”.

Ld. Advocate for petitioner has filed Additional Affidavit of Attesting Witness dated 05.09.2024 in support of execution of the Will and complied with the same.

13. As per requisition No. 6 raised in the order dated 02.09.2024, which reads as “In Schedule – I of the petition verify share of deceased in the properties”.

Ld. Advocate for petitioner submits that in Schedule-I of the petition, it has been mentioned that ‘deceased and his wife Meena Manohar Oraskar are joint owners of holding 50% each in the said flat’. Hence, petitioner is claiming 50% share through the present petition.

14. As per requisition No. 7 raised in the order dated 02.09.2024, which reads as “To check the legal heirs of deceased as per Rule 397 of the Bombay High Court (Original Side) Rules, 1980”.

Ld. Advocate for petitioner submits that legal heirs

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of testator has been mentioned in para5

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Nos. 6 to 9 of the petition. He stated on oath that save and except legal heirs mentioned in the petition there are no any other legal heirs left by the testator.

15. Petitioner has executed the Administration Bond dated 03.08.2024, 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.

24.10.2024

FIRST ASSISTANT MASTER