

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 14th August, 2024

CALLED FOR COMPLIANCE :

24 TP/2088/2024) Mr. Omkar Dhakal i/b. Yogita Deshmukh Chitnis,
) Advocate for petitioner
)
)
) **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 Lahu Dhaku
) Sawant (herein after the same is referred to as
) “Testator”), for grant of Letters of Administration with
) Will annexed. Testator said to have died on 23.12.2021
) at Kankavali, Sindhudurg. 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 along with its official
) translation, petitioner's oath, Affidavits of legal heirs of
) the testator.
)
) 2. The petitioner has explained the delay in para No. 9
) of the petition 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 one of the legatees
) 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
) Kankavali, Sindhudurg on 02.11.2021, in Marathi
) language. Its official translation is filed on the record.
) 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 testator were
) predeceased to him and testator was survived by legal
) heirs shown in the paragraph No. 8 of the petition, as
) per the provisions of the Hindu Succession Act, 1956.
) Testator died leaving behind his wife namely Sumitra
) Lahu Sawant, only son namely **Sanjay Lahu Sawant** –
) petitioner herein and three married daughters namely
) Samita Sushil Rane, Prachi Ganpat Parab and2

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Sarita Hridayanath Tawde. Consent Affidavit of Samita Sushil Rane dated 28.08.2023 is on record. She has given her consent 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 her share in the estate of the testator. She has waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the testator other than mentioned in para No. 8 of the petition.

6. Citation to Sumitra Lahu Sawant, Prachi Ganpat Parab and Sarita Hridayanath Tawde were issued, which were duly served on them through Sheriff of Bombay as per Rule 399 of the Bombay High Court (Original Side) Rules, 1980. Ld. Advocate for petitioner has filed Affidavit of Service of Sanjay J. Dhamapurkar, Bailiff and Clerk of Sheriff of Bombay dated 27.06.2024, which is on record. He deposed that packet containing citation was dispatched to Sumitra Lahu Sawant which was served upon her on 30.05.2024. Also, packet containing citation was dispatched to Prachi Ganpat Parab, which was also received by her on 31.05.2024. Citation dispatched to Sarita Tawde was served upon her on 30.05.2024, as per postal tracking report annexed to the Affidavit of Service. Hence, citations were served to Sumitra Lahu Sawant, Prachi Ganpat Parab and Sarita Hridayanath Tawde were served but they have not resisted the petition till date. Hence, petition is uncontested and proceeded accordingly.

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 29.05.2024. Notice to collector has been sent.

8. The petitioner has filed the Affidavit of Makarand Narayan **Apate** dated 29.08.2023, 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 he was present and testator signed on the Testament papers in presence of his and another

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witness. According to him, all additions3

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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. There was endorsement on Will by Dr. Nileema Musale, stating that “Mr. L. D. Sawant is completely mentally fit and has executed the present Will in his conscious”. Attesting Witness 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 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 the Petitioner has truly set forth in Schedule No.I, 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 Petitioners hands”.

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 No. 1 raised in the order dated 01.07.2024, which is as “As per Will, mother of Petitioner namely Sumitra Lahu Sawant bequeathed hence, her share needs to be justified”.

As per order passed by the Hon’ble Court dated 07.08.2024, The Hon’ble Court has dispensed with the office requisition to justify share of mother of petitioner namely Sumitra Lahu Sawant upon the undertaking. He has undertaken to give his mother, her share in movable property as mentioned in Will on page No. 4 of the Will. Affidavit filed by petitioner dated 04.07.2024 is on record.

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11. Petitioner has executed the Administration Bond dated 13th October, 2023, 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

14.08.2024

FIRST ASSISTANT MASTER

Note : This order is modified as per order dated 04.09.2024.