

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 25th October, 2024

CALLED FOR COMPLIANCE :

35 TP/638/2024) Mr. Pawan Kulkarni i/b. AVP Partners, Advocate for
) petitioner
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) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner namely Smita Prakash
) Shirke being beneficiary named under the Will executed
) by Savitri Mahadeo Vichare (herein after the same is
) referred to as “Testatrix”), for grant of Letters of
) Administration with Will annexed. Testatrix said to
) have died on 30.12.2002 at Mumbai. Petitioner filed
) copy of death certificate (which is annexed to petition as
) Exhibit-A), identity proof of the testatrix (which is
) annexed to petition as Exhibit-A1), Will along with its
) official translation, petitioner's oath.
)
) 2. The petitioner has explained the delay in para
) No.10 of the petition 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.
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) 4. Petitioner stated that the testatrix left behind her last
) Will and Testament which was duly executed at
) Mumbai on 29.12.1999, in Marathi language. Its official
) translation is filed on the record. Ld. Advocate for
) petitioner submits that the original Will No. 269 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.
)
) 5. Petitioner states that parents of testatrix were
) predeceased to her and testatrix was survived by legal
) heirs shown in the paragraph No. 8 of the amended
) petition, as per the provisions of the Hindu Succession
) Act, 1956.2

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- 2 -

35 TP/638/2024

Husband of testatrix namely Mahadeo Daji Vichare predeceased the testatrix on 05.06.1980. Testatrix died as issue-less. Petitioner is not aware about the legal heirs of testatrix as per section 15(1)(a) to 15(1)(e) of the Hindu Succession Act, 1956 and also agantes and cognates.

6. The petitioner states that she is not aware about the whereabouts of legal heirs of the testatrix. Hence, Chamber Order, having No. 383 of 2024 has been taken out to serve the Citation to non-consenting legal heirs of the testatrix, if any by publishing citation in the daily newspapers namely, "Free Press Journal" in English language and "Navshakti" in Marathi language. Accordingly, Affidavit of Service of Smita Prakash Shirke dated 03.10.2024 has been filed by the Ld. Advocate for the petitioner regarding service upon non-consenting legal heirs as per Rule 400 of the Bombay High Court (Original Side) Rules, 1980. However, nobody resist the petition till date. Hence, the present petition 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 05.06.2024. Notice to collector has been sent.

8. The petitioner has filed the Affidavit of Ramdas Shridhar Naik dated 20.04.2023 and 23.10.2024, 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 testatrix put thumb impression 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 Will was in Marathi language. Since, the testatrix was not educated he read the contents of the Will to testatrix in3

35 TP/638/2024

Marathi language and explained her the contents of the Will. Testatrix acknowledge that she had fully understood and was satisfied with the interpretation of contents of the said Will. Thereupon, after explaining the contents of the Will to the testatrix, she put her thumb impression on the Will. Hence, there is sufficient compliance of Rule 419 of the Bombay High Court (Original Side) Rules, 1980. 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 – I of the petition are referred in the Will as well as in residuals clause of the Will. Ld. Advocate for petitioner submits that as mentioned in para No. 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 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”.

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. Petitioner has executed the Administration Bond dated 15.04.2024 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.4

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– 4 –

35 TP/638/2024)
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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.

25.10.2024**FIRST ASSISTANT MASTER**