

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 19th August, 2024**

CALLED FOR COMPLIANCE :

26 TP/685/2024) Mr. Deepak Pandey, Advocate for petitioner
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being sole
) beneficiary named under the Will executed by Paniben
) Mohanlal Jethwa (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 06.08.2018
) 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- A1), Will, petitioner's oath, affidavits of legal
) heirs of the testatrix.
)
) 2. The petitioner has explained the delay in para
) No.13 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 sole 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 08.01.2015, 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 were
) predeceased to her and testatrix was survived by legal
) heirs shown in the paragraph Nos. 10 and 11 of the
) petition, as per the provisions of the Hindu Succession
) Act, 1956. Testatrix had two daughters and four sons.
) Testatrix’s daughters are namely Vijaya Mohanlal
) Jethwa and Varsha Sunil Bharkhada. Among two
) daughters of testatrix, one daughter namely Vijaya
) Mohanlal Jethwa died as spinster on 22.11.2017.2

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Testatrix's four sons are namely Mukesh Jethwa, Suresh Jethwa, Bhagwan Jethwa and Prakash Jethwa – Petitioner herein. Consent Affidavit of Mukesh Jethwa dated 02.09.2023 is on record. He has given his 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 his share in the estate of the testatrix. He has waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the testatrix other than mentioned in para Nos. 10 and 11 of the petition.

6. Citations to Suresh Jethwa, Bhagwan Jethwa, Varsha Sunil Bharkhada were dispatched on 24.04.2024, through the office of Sheriff of Mumbai. Affidavit of Service is filed by Sanjay J. Dhamapurkar dated 21.05.2024, which is on record. The citations to Suresh Jethwa, Bhagwan Jethwa, Varsha Sunil Bharkhada have been served and AD cards have been annexed to the Affidavit of Service as Exhibit – “B”, “B1” and “B2”. Hence, service is effected as per Rule 399 of the Bombay High Court (Original Side) Rules, 1980. However, non-consenting legal heirs did not resist the petition till date. Hence, this petition is 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 26.04.2024. Notice to collector has been sent.

8. The petitioner has filed the Affidavit of Subnil Suresh Shah dated 02.09.2023 and Vishal Dineshbhai Mehta dated 04.09.2023 and Additional Affidavit of Vishal Dinesh Mehta dated 15.08.2024, Attesting Witnesses to the Will, in the Form No.102 of the Bombay High Court (Original Side) Rules, 1980. Attesting witnesses deposed that they were present and testatrix 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 time3

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) 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 contents of the Will was
) explained to the testatrix by him (Vishal D. Mehta) in
) Gujarati language in front of other Attesting Witness
) before she put her signature on each of the page of the
) Will and after fully understood the contents of the Will
) in Gujarati language, Testatrix had subscribed her
) signature on each page of the Will in Gujarati language
) in presence of both the Attesting Witnesses. Hence,
) there is sufficient compliance of 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 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 – “B”, all
) the property 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 his 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.

) Ld. Advocate for petitioner submits that as
) mentioned in Will, testatrix had bequeathed property
) mentioned in Schedule I of the petition to petitioner
) herein alongwith other properties which was mentioned
) in the Will. However, petitioner is claiming only one
) property viz. Flat No. 602, B wing, Highland Glory,
) Charkop, Kandivali. This property is absolutely
) bequeathed to the petitioner herein hence, justifying
) surety in respect of other heirs of testatrix4

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) is not required. Also, petitioner is not claimed other
) properties which was mentioned in the Will.
)

) 10. As per requisition No. 1 raised in the order dated
) 12.06.2024, which reads as “To verify the averment
) made in para 11 of the petition regarding legal heirs of
) deceased”.

) Ld. Advocate for petitioner has carried out
) amendment in para No. 11 on 12.08.2024 to explain the
) legal heirs of testatrix.

) 11. As per requisition No. 2 raised in the order dated
) 12.06.2024, which reads as “To check para 12 of the
) petition”.

) Ld. Advocate for petitioner has carried out
) amendment on 12.08.2024 and corrected para No. 12
) wherein it was mentioned that petitioner is entitled to
) the 100% shares of the said flat in Schedule I of the
) petition.

) 12. As per requisition No. 3 raised in the order dated
) 12.06.2024, which reads as “In the Will, there is
) averment about the Will dated 11.12.2009”.

) Ld. Advocate for petitioner has filed Affidavit of
) petitioner dated 15.08.2024 and stated on oath that prior
) to this Will, registered Will dated 11.12.2009 was not
) probated in any Court of India and original copy of the
) said Will is in Petitioner’s custody. Since, Will dated
) 08.01.2015 has been executed later on therefore, earlier
) Will is revoked by testatrix which has been mentioned
) in the Will which states that “I state that I have made or
) executed a WILL dated 11th December, 2009 is hereby
) declare as cancelled, null and void and inapplicable and
) also any other Will and Codicil will be deemed to have
) null, void and cancelled”.

) 13. As per requisition No. 4 raised in the order dated
) 12.06.2024, which reads as “To comply with the
) provisions of rules 383 and 385 of the Bombay High
) Court (Original Side) Rules, 1985”.

) Ld. Advocate for petitioner has filed Additional
) Affidavit of Vishal D. Mehta dated 15.08.2024 in
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support of execution of Will in compliance of5

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rule 383 of the Bombay High Court (Original Side) Rules, 1980. He stated on oath as that said Will was not Probated in any Court of India and Original Will is in his custody. Also Advocate for petitioner has filed Affidavit of petitioner dated 15.08.2024 with duly annexing earlier Will dated 11.12.2009 which was cancelled by the testatrix and comply with rule 385 of the Bombay High Court (Original Side) Rules, 1980.

14. Petitioner has executed the Administration Bond dated 25.05.2024, 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.

19.08.2024

FIRST ASSISTANT MASTER