

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

CALLED FOR COMPLIANCE :

17 TP/976/2024) Ms. Sunita Serrao i/b. P. Vas and Co., 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 beneficiary
) named under the Will executed by Anthony D'souza
) (herein after the same is referred to as "Testator"), for
) grant of Letters of Administration with Will annexed.
) Testator said to have died on 21st August, 2004 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-A-1), Will, petitioner's oath, affidavits of legal
) heirs of the testator.

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) 2. The petitioner has explained the delay in paragraph
) No. 10 of the petition as per Rule 382 of the Bombay
) High Court (Original Side) Rules, 1980 (for short
) "Rules").

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) 3. Testator has appointed his sister in law, Celine
) Andrew D'souza, as his Sole Executrix under the Will.
) The said Celine Andrew D'souza died on 12th September,
) 2019. Her death certificate is annexed to petition as
) Exhibit-C. She died without proving the Will. Hence,
) the petitioner is being Sole beneficiary named under the
) Will. Hence, petition is tenable.

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) 4. Petitioner stated that the testator left behind his last
) Will and Testament which was duly executed at Mumbai
) on 31st July, 2004, in English language. 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.

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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. 8 of the petition, as per
) the provisions of the Indian Succession Act, 1925.
) Testator died as bachelor.

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- 17 TP/976/2024) Testator has two brothers and two sisters. Testator's two
) brother namely Andrew D'souza and Peter D'souza. He
) has two sisters namely Sevrin Pinto, Cecilia Serrao.
) Testator's brother namely Andrew D'souza died leaving
) behind three daughters namely Florine Richard Crasta,
) Genevieve Sheba D'souza and Shelah D'silva. His other
) brother namely Peter D'souza died on 17.12.2022. He
) died leaving behind no legal heirs. His sister namely
) Severine Pinto died leaving behind only daughter namely
) Jacintha Sequeira. Testator's one of the sisters namely
) Cecilia Serrao died leaving behind three daughters and
) one son. Her daughters namely Asha Serrao and Ancy
) Laveena Aranha, Veena and only son namely Praveen
) Savio Serrao. Consent Affidavits of Florine Richard
) Crasta dated 01.11.2023, Shelah D'silva dated
) 14.09.2023, Jacintha Sequeira dated 14.08.2023, joint
) consent Affidavit of Asha Serrao, Ancy Laveena
) Aranha, Veena and Praveen Savio Serrao, dated
) 13.10.2023 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. 8 of the petition.
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) 6. 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 22.04.2024. Notice to collector
) has been sent.
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) 7. The petitioner has filed the Affidavit of Dr. Jeetesh
) Vashudev Hasija dated 25.11.2023, one of Attesting
) Witnesses to the Will, in the Form No.102 of the
) Bombay High Court (Original Side) Rules, 1980. He
) deposed that he was present and testator 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

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and before signing the Will.

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Hence, there is sufficient compliance of the Rule 383 of the Bombay High Court (Original Side) Rules, 1980. Attesting Witness who is doctor in profession, deposed that testator was suffering from cancer, the said testator is not in a position to sign usual signature on the Will. He further deposed that testator knew English language and was conversant with English language hence, fully understood the contents of his Will, its interpretations and consequences and accordingly, executed the said Will of his own free Will, by affixing his left-hand thumb impression. Furthermore, Attesting Witness stated on oath that Testator was of sound, and disposing mind, memory and understanding at the time of execution of the Will. Hence, enough evidence is on record to accept the execution of the Will and petitioner is succeeded to prove the execution of Will.

8. 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 submitted that properties 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 as Exhibit ‘D’, 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 his 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.

9. Petitioner has executed the Administration Bond dated 15th April, 2024, in the prescribed format. Hence, following order:

ORDER

1) Petition is granted.

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- 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.

19.06.2024

FIRST ASSISTANT MASTER