

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 12th April, 2024**

CALLED FOR COMPLIANCE :

17 TP/3886/2023) Mr. Tejas Vijaykumar Dhotre, Advocate for petitioner
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioners.
) This petition is filed by petitioners, being beneficiaries
) named under the Will executed by Sheela Yogeshwar
) Karkhanis, (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 30th August,
) 2020 at Mumbai. Petitioners 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-A-1), Will, petitioner's oath,
) affidavits of legal heirs of the testatrix.
)
) 2. The petitioners have filed petition within prescribed
) limit as per Rule 382 of the Bombay High Court
) (Original Side) Rule, 1980 (for short “Rules”).
)
) 3. Testatrix has appointed Sapna R. Vaidya and
) **Yogeshwar** Govind Karkhanis as Executrix and
) Executor of her Will. Said Executrix namely Sapna
) Vaidya has relinquished executorship by filing an
) Affidavit dated 30th May, 2023. Other Executor,
) Yogeshwar Govind Karkhanis died on 31st August, 2020.
) His death certificate is annexed to the petition as EX-C.
) Hence, petitioners are being beneficiaries named under
) the Will, is entitled to present the petition. Petitioner
) No.2 namely Chetan Yogeshwar Karkhanis has filed this
) petition through Niraj Yogeshwar Karkhanis (petitioner
) No. 1), Power of attorney dated 2nd March, 2023 is on
) record and which is marked as EX-E to the petition.
)
) 4. Petitioners stated that the testatrix left behind her last
) Will and Testament which was duly executed at Mumbai
) on 6th July, 2020, 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. Office to confirm.
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5. Petitioners have been stated that parents of testatrix and parents of husband of the testatrix were predeceased to her and testatrix was survived by legal heirs shown in the paragraph No. 11 of the petition, as per the provisions of the Hindu Succession Act, 1956. Husband of testatrix died on 31st August, 2020. Testatrix died leaving behind two sons namely Niraj Karkhanis and Chetan Karkhanis, both are being petitioners herein. The petitioners affirmed that there are no other legal heirs of the testatrix other than mentioned in paragraph No. 11 of the petition.

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 25th **January**, 2024. Notice to collector has been sent.

7. Petitioners have filed the Affidavits of Pratap Ramchandra Bhalerao and Vivek Narayan Prabhu both dated 30th May, 2023, both are being Attesting Witnesses to the Will, in the Form No.102 of the Bombay High Court (Original Side) Rules, 1980. They 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 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. They further deposed that at the time of execution of 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.

8. Properties mentioned in the Schedule of the petition are referred in the Will as well as in residuals clause of the Will. The Ld. Advocate for the petitioners submitted that properties which testatrix died possessed of or entitled at the time of her death are mentioned in Schedule I of the petition.

9. As per Will, testatrix has bequeathed her jewellery to family members of petitioners.3

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Ld. Advocate for the petitioners submitted that as mentioned in para No. 9 of the petition, which read as follows :

“That the certain assets and other articles, if any which were already distributed and disbursed by the deceased amongst her legal heirs during her lifetime and as though mentioned by the deceased in the said Will as they were dealt and disbursed and distributed by the deceased during her lifetime amongst legal heirs and same did not exist on the day of demise and did not come to the hands of the petitioners. Hence, the assets have not been mentioned by the petitioners in the Schedule I of the present petition”.

Hence, Ld. Advocate for the petitioners submitted that since testatrix as dealt / disbursed / distributed jewelery during her lifetime and therefore the same have not been mentioned by the petitioners in Schedule I of the petition. Ld. Advocate for petitioners submits that above statements are made by petitioners on oath in petition and all beneficiaries are petitioner’s family members. Hence, consent affidavits of beneficiaries are not necessary.

10. Ld. Advocate for the petitioners submits that today he will upload corrected petition by correcting typographical error in prayer of the petition in favour of the petitioner by changing “Petitioner No.2” instead of “petitioner No.1”.

11. Petitioners have executed the Administration Bond dated 12th February, 2024, in the prescribed format. Hence, following order:

ORDER

- 1) Petition is granted.
- 2) Office to issue LIMITED Letters of Administration with Will annexed and limited until Original petitioner No.2 shall come in apply for 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 is4

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- 17 TP/3886/2023) 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.

12.04.2024**FIRST ASSISTANT MASTER**

Note : This order is modified as per Speaking to the minutes of order dated 25th June, 2024.