

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

CALLED FOR COMPLIANCE :

- 25 TP/978/2024) Mr. Jayant Wani i/b. Seema Hunnurkar and Associates,
) Advocate for petitioner
)
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being Sole legatee
) named under the Will executed by Kamlaben
) Dharamshi Thakkar (herein after the same is referred to
) as Testatrix) for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 2nd June,
) 2011 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-A-1), Will, petitioner's oath,
) affidavits of legal heirs of the testatrix.
)
) 2. The petitioner has explained the delay in para 10 of
) the petition as per Rule 382 of the Bombay High Court
) (Original Side) Rule, 1980 (for short "Rules").
)
) 3. Testatrix has appointed Hasmukh Laherchand Shah
) and Dilip Thakurlal Parikh as executors. One of the
) executors namely Hasmukh died on 11.05.2021 and his
) death certificate has been annexed to the petition at
) Exhibit – C. Testatrix has also appointed another
) executor namely Dilip Thakarlal Parikh. He has
) renounced his rights of executorship and accordingly,
) filed Affidavit dated 19.12.2023. Hence, the present
) petition is filed by the petitioner being sole legatee
) named under the Will of the testatrix.
)
) 4. Petitioner stated that the testatrix left behind her
) Will and Testament which was duly executed at
) Mumbai on 5th June, 2007, in English language. Ld.
) Advocate for the 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 testatrix were
) predeceased to her and testatrix was survived2

7. The petitioner has filed the Affidavit of Nitin Pravinchandra Pandya dated 13.12.2023, 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 testatrix signed 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, 1980.3

CONTD....

– 3 –

25 TP/978/2024

) Will is appeared to have been executed in a language
) other than the language known to the testatrix. However,
) as per Rule 419 of the Bombay High Court (Original
) Side) Rules, 1980, Attesting Witness deposed that
) contents of the Will were duly interpreted and explained
) to the testatrix in Hindi language by him at the time of
) execution of the Will. Ld. Advocate for petitioner
) submits that in the Will, it has been mentioned that Will
) was explained in Gujarati language but Attesting
) witness deposed that it has been explained in Hindi
) language since testatrix is well acquainted in both
) languages in Gujarati as well as Hindi. Will is duly
) registered before Joint Sub-Registrar, Andheri No. 2
) under registration No. BDR-4/4145-2007. 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.

) 8. Properties mentioned in the schedule of the petition
) are referred in the Will. Ld. Advocate for petitioner
) submits that as mentioned in para 9 of the petition,
) which reads as under :

) “The petitioner states that the petitioner was very
) well acquainted with the testatrix during his
) lifetime and according to knowledge of the
) petitioner, is aware that the testatrix during her
) lifetime has disposed off and / or realized and
) settled the accounts of the assets / properties
) mentioned in the said last Will, save and except
) the assets mentioned in Schedule – I of present
) petition. The petitioner states that under the
) aforesaid circumstances, the petitioner has not
) shown the said assets in Schedule-I of petition”.

) Ld. Advocate for the petitioner submits on the
) instructions by petitioner that as explained in para No. 9
) of the petition, locker is not in existence.

) Ld. Advocate for petitioner also submits that
) petitioner has stated on oath that during lifetime,
) testatrix has distributed the jewellery.4

CONTD...

– 4 –

25 TP/978/2024

)
) Therefore, Affidavit of Usha Mukesh Thakkar is not
) filed by the petitioner. Statement made by Ld. Advocate
) is accepted.
)

) Hence, 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.
)

) 9. Petitioner has executed the administration Bond
) dated 13.12.2023 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.
)

12.07.2024

FIRST ASSISTANT MASTER