

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 27th August, 2024

CALLED FOR COMPLIANCE :

23 TP/1165/2024) Ms. Vinita Muley , Advocate for petitioner
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being one of the
) beneficiaries named under the Will executed by
) Subhash Bhalchandra Kotkar (herein after the same is
) referred to as “Testator”), for grant of Letters of
) Administration with Will annexed. Testator said to have
) died on 6th November, 2023 at Mumbai. Petitioners 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.
)
) 2. The petitioner has filed petition within prescribed
) limit as per Rule 382 of the Bombay High Court
) (Original Side) Rule, 1980 (for short “Rules”).
)
) 3. The testator has not appointed Executor to execute
) the Will. The petitioner being one of the beneficiares
) 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 12th November, 2020, 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 parents of testator were
) predeceased to him and testator was survived by legal
) heirs shown in the paragraph No.6 of the petition, as per
) the provisions of the Hindu Succession Act, 1956. Wife
) of the testator namely Meena Subhash Kotkar died on
) 29th April, 2006 and her death certificate has been
) annexed to petition as Exhibit “C”. Testator died
) leaving behind only son namely Vivek Subhash Kotkar -
) petitioner herein and only daughter namely2
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Varsha Sanjeev Vaidya. Consent Affidavit of Varsha Sanjeev Vaidya dated 11th January, 2024 is on record. She has given her 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 her share in the estate of the testator. She has waived the service of Citation. The petitioner affirmed that there are no other legal heirs of testator other than mentioned in para no. 7 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 14th May, 2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Sharadkumar A. Joshi dated 11th January, 2024 and Additional affidavit of Ranjana Ajit Narvekar dated 17th August, 2024, 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 testator 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. Attesting witness deposed that the contents of the Will were read in the presence of both of them. Will is duly registered before Joint sub Registrar, Borivali-3, Mumbai City, under Registration No. BRL/3/III/6564/2020. Attesting witness further deposed that at the time of execution of the Will, testator 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.

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8. Properties mentioned in the schedule of the petition are referred in the Will. Ld. Advocate for the petitioner has submitted that as mentioned in para no.7, which reads as under :

“That the Petitioner has truly set forth in Schedule No.I, hereto annexed and marked as Exhibit “D” all the properties and credits which the said deceased possessed of or is entitled to at the time of his death, which have or are likely to come to his hands. So far as the Petitioner has been able to determine or is aware there is no property and credits other than what is specified in the Schedule No. I of the petition”.

The Ld. Advocate for the petitioner submitted that properties available to the testator at time of his death are mentioned in the Schedule – I of the petition.

Ld. Advocate for the petitioner further submit that as mentioned in Para No. 10 of the petition that the movable / immovable properties mentioned in the para Nos. C (2) , D, and E of the will have not been shown in Schedule I of the petition, since they were disposed of by the testator during his lifetime.

9. There are beneficiaries under Will of testator namely Vishal Vivek Kotkar, Aishwarya Sanjeev Vaidya. They have filed their Consents Affidavits dated 13th July, 2024 and Aishwarya Sanjeev Vaidya dated 16th July, 2024 are on record. They have given their consents in the form of Affidavits 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.

10. As per requisition No. 1 raised in the order dated 25th June, 2024, which reads as “To file consent Affidavits of beneficiaries mentioned in the Will”.

Ld. advocate for the petitioner have filed Consent Affidavits dated 13th July, 2024 and Aishwarya Sanjeev Vaidya dated 16th July, 2024 and complied with the same.

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11. As per requisition No. 2 raised in the order dated 25th June, 2024, which reads as “In the Will there is reference of other Will executed by deceased hence, Ld. Advocate for the petitioner to comply with the provisions of Rule 385 of the Bombay High Court (Original Side) Rules, 1980”.

Ld. Advocate for the petitioner has filed Affidavit of petitioner dated 9th August, 2024 and stated on oath that he is not aware about the whereabouts original of revoked Will dated 09.08.2020. Ld. Advocate for the petitioner submits that Will dated 12th November, 2020 is last Will and Testament of testator and he has revoked earlier Will as mentioned in para no.1 of the Will.

12. As per requisition No. 3 raised in the order dated 25th June, 2024, which reads as “To comply with the provisions of rules 383 and 419 of the Bombay High Court (Original Side) Rules, 1980”.

Ld. Advocate for the petitioner has filed Additional Affidavit of Attesting Witness of Ranjana Ajit Narvekar dated 17th August, 2024 in support of execution of Will and complied with the same.

13. As per requisition No. 4 raised in the order dated 25th June, 2024, which reads as “Properties mentioned in the Will and not shown in the Schedule”.

Ld. Advocate for the petitioner submits that this requisition has already explained in para no. 10 of the petition.

14.. Petitioner has executed the Administration Bond dated 12th June, 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.

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23	TP/1165/2024	)	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
		)	

27.08.2024**FIRST ASSISTANT MASTER**