

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 25th June, 2024

CALLED FOR COMPLIANCE :

39 TP/1438/2024) Mr. Manish Gaikwad a/w. Naved Mulla, Advocate for
) petitioner

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) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being legatee under
) the Will executed by Kishor Kanayalal Chhabria (herein
) after the same is referred to as “Testator”), for grant of a
) Letters of Administration with Will annexed. Testator
) said to have died on 31.05.2013 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- A1) Will,
) petitioner's oath, affidavits of legal heirs of the testator.

) 2. The petitioner has explained the delay in para
) No.13 of the petition vide Rule 382 of the Bombay High
) Court (Original Side) Rule, 1980(for short “Rules”).

) 3. Testator has appointed Mr. Shivkumar Ramchandra
) Vyas as executor of the Will. The said executor has
) renounced his rights to apply for Probate as per
) Affidavit dated 13.07.2023 which is annexed to the
) petition at Exhibit – ‘C’. Petitioner being legatee named
) under the Will has applied for Letters of Administration
) with Will annexed.

) 4. Petitioner stated that the testator left behind his last
) Will and Testament which was duly executed at
) Mumbai on 05.03.2012 in English language. The said
) Will was registered before Sub-Registrar Assurance,
) Kurla – I, District Mumbai and which was duly
) registered under registration No. BDR-3-02679/2012 on
) 22.03.2012. 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. 9 of the petition, ...2
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as per the provisions of the Hindu Succession Act, 1956. Testator died leaving behind wife namely Rupa Kishor Chhabria – petitioner herein and Rushika Kishore Chhabria – daughter of deceased. Parents of testator predeceased to him. Testator had no sons and no any other daughter. Consent Affidavit of Rushika Kishor Chhabria dated 13.12.2023 is on record. She has given her consent in the form of Affidavits, 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 the testator other than mentioned in para 9 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 03.06.2024. Notice to collector has been sent.

7. The petitioner has filed the affidavit of Altaf Chhotan Khan dated 11.10.2023, one of Attesting Witnesses 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 testator 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. The said Will was registered before Sub-Registrar Assurance, Kurla – I, District Mumbai and which was duly registered under registration No.BDR-3-02679/2012 on 22.03.2012. Ld. Advocate for petitioner submits that as mentioned in para 2 of the Attesting Witness, testator has put his signature at the foot of the Will in English language as he will well acquainted with the English language. Attesting witness further deposed that at the time of execution of the Will, testator was of sound and disposing mind, memory and understanding.3

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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-I of the petition are referred in the Will. Ld. Advocate for petitioner submitted that as mentioned in para 6 of the petition, which reads as under :

“That the Petitioner has truly set forth in Schedule-I, hereto annexed and marked as EXHIBIT-'D' details of all the property and credits which the deceased at the time of his death possessed of or entitled to and which have, or are likely to come to the Petitioner's 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 18th 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.

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

25.06.2024

FIRST ASSISTANT MASTER