

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 4th October, 2024

CALLED FOR COMPLIANCE:

34 TP/1441/2024) Ms. Kanchan Pamnani, Advocate for petitioner

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) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by Arnaz Zhooben Bhiwandiwal, being Constituted Attorney of Firdaus Homi Kanga being Sole Executor named in the Will. Will was executed by Tehmi Homi Kanga (herein after the same is referred to as Testatrix"). Testatrix said to have died on 29th February, 2020 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-B), Will, petitioner's oath, affidavits of legal heirs of the testatrix and petitioner's affidavit.

) 2. Ld. Advocate for petitioner submits that as mentioned in para No. 9 of the petition by petitioner that Firdaus Homi Kanga was Executor under the Will.

) Ld. Advocate for the petitioner submits that this petition was earlier filed by Arnaz Zhooben Bhiwandiwal. She has carried out necessary amendment in petition on 3rd August, 2024 and prayed for as follows:

) "That Letters of Administration with the said Will annexed may be granted to him, having effect in the State of Maharashtra for the use and benefit of the said Firdaus Homi Kanga as such Executor as aforesaid and limited until he shall obtain Probate of the said Will from this hon'ble Court reserving the right of the sole Executor to apply for probate".

) Said Executor had executed Power of Attorney dated 27th October, 2018 in favour of Arnaz Zhooben Bhiwandiwal. Copy of Power of Attorney has been annexed to the petition as Exhibit – "F". Said Firdaus Homi Kanga has appointed Arnaz Zhooben Bhiwandiwal to be his Constituted Attorney

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for him and in his name and on his behalf to apply for and obtain a grant of Letters of Administration with Will.

3. The petitioner has explained the delay in para 11 of the petition as per Rule 382 of the Bombay High Court (Original Side) Rule, 1980(for short “Rules”).

4. Petitioner stated that the testatrix left behind her last Will and Testament which was duly executed at Mumbai on 2nd February, 1990 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 and husband of testatrix were predeceased to her and testatrix was survived by legal heirs shown in the paragraph No. 8 of the petition, as per the provisions of the Indian Succession Act, 1925 as applicable to Parsi. Testatrix died leaving behind two daughters namely Arnaz Bhiwandiwalwa – Constituted Attorney of the petitioner herein, Mahroukh Piloo Shroff and only son namely Firdaus Homi Kanga. Consent Affidavits of Mahroukh Piloo Shroff dated 2nd December, 2023 and Arnaz Zhooben Bhiwandiwalwa dated 20th September, 2024 are on record. They have given their consents in form of Affidavits, which are filed on the record by Constituted Attorney of 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 testatrix. They have waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the testatrix 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 27.05.2024. Notice to collector has been sent.

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7. The petitioner has filed the affidavit of Shernaz Faram Dastur, 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 she was present and testatrix signed on the Testament papers in presence of her and another witness. According to her, 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 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. Other legatees who are not legal heirs of testatrix have consented vide their Affidavits to grant Letters of Administration with Will to the petitioner. Consent Affidavit of Cyrus Pirojshaw Shroff dated 06.11.2023 and Sorab P. Shroff dated 13.11.2023 are on record. They have waived the service of Citation. They stated on oath that they have received all the bequest to them under Will. They have given their free consent without justifying surety of their shares.

9. 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 as mentioned in para 7 of the petition which reads as under:

“That the petitioner has truly set forth in Schedule No. I, hereto annexed and marked Exhibit “E”, all the property and credits which the deceased died possessed of or entitled to at the time of her death, which have or are likely to come to her hands”.

The 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.

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As per Will para No. 6, testatrix has bequeathed property mentioned in Schedule I of the petition to her son namely Firdaus Homi Kanga absolutely and exclusively.

10. Petitioner has executed the Administration Bond dated 11.06.2024, in the prescribed format. Hence, following order:

ORDER

1) Petition is granted.

2) Office to issue LIMITED Letters of Administration with Will annexed as per the provisions of the Indian Succession Act, 1925 to the petitioner, till original Petitioner come and apply for Probate later on 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.

04.10.2024

FIRST ASSISTANT MASTER