

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER**

Date: 1st July, 2024

CALLED FOR COMPLIANCE :

17 TP/1600/2024) Mr. S. U. Lakdwala a/w. Jyoti Badgujar, Advocate for
petitioner

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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 Yousuf Allarakhia Joonas (herein after the same is referred to as “Testator”), for grant of Letters of Administration with Will annexed. Testator said to have died on 15.08.2017 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- A1), Will, petitioner's oath, Affidavits of legal heirs of the testator.

2. The petitioner has explained the delay in para 10 of the petition vide 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 is being sole legatee named under the Will. Hence, petition is tenable.

4. Petitioner stated that the testator left behind his last Will and Testament which was duly executed at Mumbai on 17.01.2017, 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 grandparents of testator were predeceased to him and testator was survived by legal heirs shown in the paragraph No. 8 of the petition, as per the provisions of the Mohammedan Law, applicable to Sunni muslim. Testator married once during his lifetime. Wife of the testator namely Zakiya Yosuf Joonas died on 14.01.2005 and her death certificate is annexed at Exhibit – “D” to the petition. Testator died issue-less.

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) Testator has two sisters and two brothers. Testator has
) two sisters namely Khairunnisa A. Joonas, Ayesha H.
) Ebrahim and two brothers namely Ahmed Joonas, Abdul
) Qadir Jusbani. One of the sister of the testator namely
) Khairunnisa Joonas died as spinster on 13.07.2020.
) Testator's another sister namely Ayesha H. Ebrahim died
) as widow and issue-less on 02.11.2018. Testator's
) brothers namely Ahmed Joonas died leaving behind wife
) namely Sophia Joonas and six daughters namely Nasreen
) Khan, Kausar Kherani, Tasneem Contractor, Kishwar
) Joonas, Rifat Elaasar and Lubna Akbany. Above said
) Sophia Joonas died on 25.02.2007. Testator's brother
) namely Abdul Jusbani died leaving behind his wife
) namely Aziza Jusbani and son namely Nadeem Jusbani
) and only daughter namely Naila Saeed Ibrahim. Consent
) Affidavits of Nasreen Khan dated 19.01.2024, Kausar
) Kherani dated 02.01.2024, Tasneem Contractor –
) petitioner Kishwar Joonas dated 23.12.2023, Rifat
) Elaasar dated 02.01.2024 and Lubna Akbany dated
) 21.12.2023, Aziza Jusbani dated 03.01.2024, Nadeem
) Jusbani dated 21.12.2023, Naila Saeed Ibrahim dated
) 20.12.2023 are on record. They have given their consents
) in the form of Affidavits, which are 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 their
) shares in the estate of the testator. They have waived the
) service of Citation. The petitioner affirmed that there are
) no other legal heirs of the testator other than mentioned
) in para 8 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 13.05.2024. Notice to collector
) has been sent.

) 7. The petitioner has filed the Affidavit of Aejaaz
) Ahmed Khan dated 19.01.2024, 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

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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. Ld. Advocate for petitioner submits that in the Will, there were two Attesting Witnesses and same was stated on oath by the Attesting Witnesses. Therefore, on page No. 5 of the Will Sr. No. 13 is blank. Hence, there is sufficient compliance of the Rule 383 of the Bombay High Court (Original Side) Rules, 1980. Attesting Witness deposed that Will was explained to testator in Hindi language by Mr. Khan M. Asim, Advocate High Court Bombay, who incorporated signature and stamp at the bottom of the Will, who too was present at the time of execution of the Will. Hence, there is sufficient compliance of rule 419 of the Bombay High Court (Original Side) Rules, 1980. Will is duly registered at the office of Joint Sub-Registrar, Mumbai City – 5, Mumbai bearing registration No.BBE5/287 of 2017. 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.

8. Properties mentioned in the schedule of the petition are referred in the Will. Ld. Advocate for petitioner submits that as mentioned in para 6 of the petition, which reads as under :

“That the Petitioner has truly set forth in Schedule No. I, hereto annexed marked Exhibit “C”, all the property and credits which the deceased died possessed of or entitled to at the time of his death, which have or are likely to come to her hands. Rest all properties referred in the Will but not claimed in the Schedule as they have been disposed after execution of Will by Testator and did not come in the hands of petitioner at the time of filing of the present petition”.

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.4

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9. Petitioner has executed the administration Bond dated 2nd May, 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

01.07.2024

FIRST ASSISTANT MASTER