

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 5th August, 2024

CALLED FOR COMPLIANCE :

29 TP/1798/2024) Ms. Jacinta D'silva i/b. Kajal Mahimtura, Advocate for
) petitioner
)
) -
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being sole
) beneficiary named under the Will executed by Aruna
) Kanayalal Bhatia (herein after the same is referred to as
) "Testatrix"), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 09.03.2020
) at Oxfordshire, U. K.. 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-A1), Will, petitioner's oath,
) Affidavits of legal heirs of the testatrix.
)
) 2. The petitioner has explained the delay in para
) No.10 of the petition vide Rule 382 of the Bombay
) High Court (Original Side) Rule, 1980(for short
) "Rules").
)
) 3. The testatrix has appointed her brother namely
) Giridhar Gopal Bhatia as sole executor of her Will. The
) said executor has filed his Affidavit of relinquish of his
) rights of executorship dated 24.01.2024 which is on
) record. Hence, petitioner being the sole beneficiary
) named under the Will, is entitled to file the present
) petition.
)
) 4. Petitioner stated that the testatrix left behind her
) last Will and Testament which was duly executed at
) Mumbai on 22.11.2011 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 testatrix was survived by legal
) heirs shown in the paragraph No. 9 of the petition, as
) per the provisions of the Hindu Succession Act, ...2
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1956. Testatrix died leaving behind her husband namely Kanayalal Issardas Bhatia - petitioner herein and two married daughters namely Shalini Bhatia and Nisha Bhatia. Consent Affidavits of Shalini Bhatia and Nisha Bhatia both dated 26.10.2023 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 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 06.05.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Srichand Nagrani dated 17.01.2024, 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. Will is duly notarized before Srichand L. Nagrani, Advocate and Notary for Greater Mumbai under registration No. 508 dated 22.11.2011 and same has been deposed by Witness in para No. 4 of his Affidavit. He 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.

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8. 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 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 and marked Exhibit “C”, all the property and credits which the deceased died possessed of or entitled to at the time of her death, so far as the petitioner is able to ascertain or is aware, there are no properties or credits other than what are specified in Schedule No. I attached to the petition herein”.

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.

As per Will, testatrix has bequeathed all her movable and immovable properties which will be inherited by her to husband namely Kanayalal Issardas Bhatia – petitioner herein.

9. Petitioner has executed the Administration Bond dated 22.07.2024, 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.

05.08.2024

FIRST ASSISTANT MASTER