

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 8th August, 2024

CALLED FOR COMPLIANCE :

23 TP/2000/2024) Ms. Pinky Chainani, Advocate for petitioner
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioners. The petitioners are
) being beneficiaries named under the Will executed by
) Hansraj Melaram Sharma (herein after the same is
) referred to as “Testator”), for grant of Letters of
) Administration with Will annexed. Testator said to have
) died on 07.06.2023 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-A1), Will, petitioner's
) oath, Affidavits of legal heirs of the testator.
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) 2. The petitioners have 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 petitioners are being the beneficiaries
) named under the Will. Hence, petition is tenable.
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) 4. Petitioners stated that the testator left behind his last
) Will and Testament which was duly executed at
) Mumbai on 19.10.2016, 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. Petitioners states that parents of testator were
) predeceased to him and testator was survived by legal
) heirs shown in the paragraph No. 7 of the petition, as
) per the provisions of the Hindu Succession Act, 1956.
) Testator died leaving behind wife namely Savitri
) Hansraj Sharma, two sons and two married daughters.
) Testator’s two daughters are namely Shanti Nitin
) Chawla and Sunita Satpal Kapoor. Testator’s two sons
) namely Sudhir Hansraj Sharma – Petitioner No. 1
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herein and Sunil Hansraj Sharma – petitioner2

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No. 2 herein. Ld. Advocate for petitioner submits that Consent Affidavit of Savitri H. Sharma dated 01.01.2024 is on record. Thereafter, she died on 28.04.2024 and copy of her death certificate has been produced on record by Affidavit dated 07.08.2024. Legal heirs of wife of testator's are already been mentioned in para No. 7 of the petition. Also, testator has not bequeathed any property to her in the Will. Consent Affidavits of Savitri dated 01.01.2024, Sunita Satpal Kapoor dated 25.01.2024 and Shanti Nitin Chawla dated 29.03.2024 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 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 09.05.2023. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Hitendra G. Sharma dated 01.01.2024 and dated 01.06.2024, 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 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. Attesting Witness deposed that Will was explained and interpreted by the Sub-Registrar to the testator and after fully understanding the contents thereof, testator has put

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his signature and thumb impression on the Will. Will is duly registered before the Joint Sub-Registrar,3

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Andheri No. 3 under registration No. BDR-9/III/9470/2016. Hence, there is sufficient compliance of Rule 419. 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 No. 5 of the petition, which reads as under :

“That the Petitioners have truly set forth in Schedule I hereto annexed and marked “Exhibit C”, all the properties 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 the Petitioner’s hand”.

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. As per requisition No. 1 raised in the order dated 04.07.2024, which reads as “Para regarding “executor” is missing”.

Ld. Advocate for petitioner submits that testator has not appointed any executor in his Will and same has been stated on oath by filing Affidavit of petitioner dated 07.08.2024.

10. As per requisition No. 2 raised in the order dated 04.07.2024, which reads as “To file Affidavit of petitioner regarding explanation of para No. 12.1 of the Will”.

Ld. Advocate for petitioner has filed Affidavit of petitioner dated 07.08.2024 and stated on oath that wife of the testator / mother of the petitioner namely Savitri H. Sharma died on 28.04.2024. Her death certificate has been annexed to the Affidavit as annexure “I”. He

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further stated on oath that during her lifetime,
petitioners have been taken complete care4

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of their mother and all expenses were jointly borne by
them as per the Will.

11. As per requisition No. 3 raised in the order dated
04.07.2024, which reads as “Under the Will, there is
reference of other Will. Hence, to comply with the
provisions of rule 385 of the Bombay High Court
(Original Side) Rules, 1980.

Ld. Advocate for petitioner submits that petitioner
has filed Affidavit dated 07.08.2024 and submits that
petitioner has stated on oath that Exhibit - “B” annexed
to this petition i.e. his last Will and testament of
testator. He further stated on oath that testator has
executed another Will, which was registered before this
Will and contents of the previous Will are similar to the
present Will and present Will supersedes the previous
Will.

12. As per requisition No. 4 raised in the order dated
04.07.2024, 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 petitioner submits that Affidavit
filed by Hitendra G. Sharma dated 01.06.2024 and has
been complied with the abovesaid requisition.

13. As per requisition No. 5 raised in the order dated
04.07.2024, which reads as “To file consent of Shanti
Nitin Chawla”.

Ld. Advocate for petitioner submits that consent
Affidavit of Shanti Nitin Chawla dated 29.03.2024 is on
record and she has given her consent in favour of
petitioner.

14. Petitioner has executed the administration Bond
dated 14.05.2024, in the prescribed format. Hence,
following order:

ORDER

1) Petition is granted.

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2) Office to issue Letters of Administration with Will annexed as per the provisions of the Indian Succession Act, 1925 to the petitioner and upon5

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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.

08.08.2024

FIRST ASSISTANT MASTER