

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 29th August, 2024**

CALLED FOR COMPLIANCE :

25 TP/2015/2024) Ms. Sujata Babar, Advocate for petitioner

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1. Perused Petition. Heard Ld. Advocate for petitioner. This petition is filed by petitioner, being one of the legatees named under the Will executed by Dattaram Waman Varadkar (herein after the same is referred to as “Testator”), for grant of Letters of Administration with Will annexed. Testator said to have died on 16.01.2024 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 along with its official translation, petitioner's oath, affidavits of legal heirs of the testator. Ld. Advocate for petitioner undertakes to upload corrected copy of Petition by correcting capacity of petitioner as “one of the legatees”. The said undertaking is accepted.
2. The petitioner has filed the present 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 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 23.12.2016, in Marathi language. Its official translation is filed on the record. 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, as per the provisions of the Hindu Succession Act, 1956. Testator died as bachelor.

6. Ld. Advocate for the petitioner submits that as per order passed on 08.07.2024, amendment has been carried out on 18.07.2024 and name of one of the sister of testator namely Kamal Anant Kudalkar has been added in petition at Para No. 9. Thereafter, citation to Kamal Anant Kudalkar dispatched on 06.08.2024 through Bailiff of office of Sheriff of Mumbai. Affidavit of Service filed by Sanjay J. Dhamapurkar, Bailiff and clerk of office of sheriff of Mumbai dated 21.08.2024 is on record. As per tracking report which was annexed to the Affidavit of Service (Exhibit – “B”) citation was duly served upon her on 07.08.2024 and also postal acknowledgment having duly personally signed by said Kamal Anant Kudalkar annexed at Exhibit – “C”. Hence, service is effected upon said Kamal Anant Kudalkar as per Rule 399 of the Bombay High Court (Original Side) Rules, 1980 through the office of Sheriff, Mumbai. However, she did not resist the petition till date. Hence, this petition is proceeded as uncontested petition.

7. Affidavit of Service of General Citation is filed, stating that citation has been affixed on the3

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) Notice Board of the Hon'ble High Court, Bombay and
) notice board of the Collector's office on 22.05.2024.
) Notice to collector has been sent.

) 8. The petitioner has filed the Affidavit of Yashwant
) Giridhar Ludbe dated 11.03.2024, 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. Will is duly registered
) before Joint Sub-Registrar, Mumbai City – II under
) registration No. BBE-2/13791/2016. Attesting Witness
) deposed that at the request of testator, he had read over
) contents of the Will to the testator and then testator put
) his signature in English language in front of him. Hence,
) there is sufficient compliance of Rule 419 of the
) Bombay High Court (Original Side) Rules, 1980.
) 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.

) 9. Properties mentioned in the schedule of the petition
) are referred in the Will. Ld. Advocate for petitioner
) submits that as mentioned in para No. 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 his death,
) which have or likely to come 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.
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Testator bequeathed movable and immovable properties to his niece namely Gayatri Eknath Ludbe – petitioner herein.

10. Petitioner has executed the Administration Bond dated 14.05.2024, 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.

29.08.2024

FIRST ASSISTANT MASTER