

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 16th July, 2024**

CALLED FOR COMPLIANCE :

32 TP/2033/2024) Mr. Rahul Bothra, Advocate for petitioner
)
) **P.C.:** 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 Homai Homi
) Shroff (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testator said to have died on 27.02.2024
) 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-A1), Will, petitioner's oath, affidavits of legal
) heirs of the testatrix.
)
) 2. The petitioner has 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 petitioner is being one of the legatees
) named under the Will. Hence, petition is tenable.
)
) 4. Testatrix has appointed Shirzad Hosi Bhathena as
) sole executor under the Will. Said Executor has filed
) Affidavit dated 16.03.2024 and renounced his rights
) being sole executor of the Will. _Hence, the petitioner
) being the one of the legatees named under the Will, is
) entitled to present the petition.
)
) 5. Petitioner stated that the testatrix left behind her
) last Will and Testament which was duly executed at
) Mumbai on 15.7.2021, 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.
)
) 6. Petitioner states that parents of testatrix were
) predeceased to her and testatrix was survived by legal
) heirs shown in the paragraph No. 11 of the petition, as
) per the provisions of the Indian Succession Act, 1925
) applicable to Parsi Zoroastrian.2

Parents of husband of testatrix predeceased to her. Testatrix died leaving behind her husband namely Homi Noshir Shroff and two married daughters namely Ferzin Jimmy Bhathena, Persis K. Khambata – petitioner herein. Testatrix had no son. Consent Affidavit of Homi Noshir Shroff and Ferzin Jimmy Bhathena both dated 16.03.2024 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 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 11 of the petition.

8. The petitioner has filed the affidavit of Zeenia Farokh Baria dated 16.03.2024, 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 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 registered before Joint Sub-Registrar, Mumbai No. 5 under registration No. 7867/2021. 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.

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) submits as mentioned in para 7 of the petition, which
) reads as under :

) “That the Petitioner has truly set forth in
) Schedule – I, hereto annexed and marked as
) Exhibit “C” are 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.

) 10. As per the order dated 03.07.2024 requisition
) raised is as “In this matter, as per para 6 of the Will,
) there are beneficiaries named under the Will. Hence, Ld.
) Advocate for petitioner file consent Affidavits of the said
) beneficiaries”.

) Ld. Advocate for petitioner has filed Consent
) Affidavit of Delara Kaivan Khambata dated 05.07.2024
) and also deposed that there is no any grandchildren was
) born after preparing this Will to anyone of the daughters
) till today.

) 11. Petitioner has executed the administration Bond
) dated 25.05.2024, 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

16.07.2024

FIRST ASSISTANT MASTER

