

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 2nd July, 2024**

CALLED FOR COMPLIANCE :

33 TP/2034/2024) Ms. Chhaya Parab i/b. Shah and Sanghavi, Advocate for
) petitioner
)

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) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed through the Constituted Attorney
) Jane Elizabeth Cox. The Petitioner namely Arun
) Badrinarayan Sharma, being the sole surviving Executor
) named under the Will and testament executed by Dr.
) Badrinarayan Sharma (herein after the same is referred
) to as “Testatrix”), for grant of Letters of Administration
) with Will annexed. Testator said to have died on
) 09.08.2020 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, petitioner's oath.
)
) 2. The petitioner has explained delay in para 12 of the
) petition as per Rule 382 of the Bombay High Court
) (Original Side) Rule, 1980 (for short “Rules”).
)
) 3. The testator had appointed in all three executors /
) executrix in the Will, namely Rama Sharma, Arun
) Sharma and Jashwant C. Shah. Among three executors
) two executors namely Rama Sharma and Jashwant C.
) Shah died had on 30.10.2023 and 09.05.2008
) respectively. Death certificates of the said executors are
) annexed to the petition at Exhibit “C” and “D”. One of
) the executor namely Arun Sharma is now sole surviving
) executor and beneficiary named under the Will. .

) Ld. Advocate for petitioner submits that sole
) surviving executor / petitioner herein is permanent
) resident of San Francisco, U.S.A. and unable to file this
) Letters of Administration with Will and therefore, he
) has appointed Jane Elizabeth Cox, Advocate as his
) Constituted Attorney on behalf of him. Photocopy of
) Power of Attorney is annexed to the petition at Exhibit –
) “E”. The petitioner is the sole surviving executor under
) the Will. Hence, petition is tenable.2

33 TP/2034/2024

4. Petitioner stated that the testatrix left behind his last Will and Testament which was duly executed at Mumbai on 15.05.1993, in English language. Ld. Advocate for petitioner has submitted 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 testatrix were predeceased to him and testator was survived by legal heirs shown in the paragraph No. 11 of the petition, as per the provisions of the Hindu Succession Act, 1956. The wife of testator namely Rama Sharma died on 30.10.2023 and testator had no daughter and only son who is petitioner herein. The petitioner affirmed that there are no other legal heirs of the testator other than mentioned in para No. 11 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 17.05.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Paresb Jashwant Shah dated 18.12.2023, 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 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 he has officially changed his signature and the signature appearing on his Affidavit is of his signature and he confirmed that Will has been attested by him on 15th May, 1993. 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 and3

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33 TP/2034/2024

) petitioner is succeeded to prove the execution of Will.

) 8. Properties mentioned in the Schedule - I of the
) petition are referred in the Will. Ld. Advocate for
) petitioner submits that as mentioned in para 8 of the
) petition which reads as under :

) “That the Petitioner has truly set forth in Schedule
) I all the properties and credits which the deceased
) was possessed off or was entitled to at the time of
) his death which are likely to come to the hands of
) the petitioner which are annexed hereto and
) marked as Exhibit – “F”. So far, the petitioner has
) been able to ascertain or is aware, there are no
) properties and credits other than what are
) specified in the Schedule – I attached to the
) 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.

) 9. Ld. Advocate for petitioner submits that the
) petitioner is sole legal heir who is class I legal heir of
) testator. Therefore, Administration Bond is not filed. As
) per order dated 28.02.2023 passed by the Hon’ble
) Court, registry has been directed by the Hon’ble Court
) not to insist filing / furnishing Administration Bond
) whenever there is sole legal heir, class I legal heir has
) filed the petition. 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.

02.07.2024

FIRST ASSISTANT MASTER

