

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 28th June, 2024**

CALLED FOR COMPLIANCE :

43 TP/2037/2024) Mr. Umeshchandra S. Tiwari, Advocate for petitioner
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being one of the
) beneficiaries named under the Will executed by Sharad
) Chandra Hari Pathak (herein after the same is referred
) to as “Testator”), for grant of Letters of Administration
) with Will annexed. Testator said to have died on
) 18.07.2016 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 the delay in para 11 of
) the petition 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 beneficiaries
) named under the Will. Hence, petition is tenable.
)
) 4. Petitioner states that the testator left behind his last
) Will and Testament which was duly executed at
) Mumbai on 27.01.2012 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 parents and grandparents 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. Wife of testator predeceased to
) him. Testator had only son namely Ajaykumar Sharad
) Pathak – petitioner herein and no daughter. The
) petitioner affirmed that there are no other legal heirs of
) the testator other than mentioned in para 9 of the
) petition.2

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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 03.06.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Pawankumar Jain dated 21.02.2024, 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. Will was duly notarized before Dharmaraj Kedarnanath Mishra, Advocate and Notary, Government of India. 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 I of the petition are referred in the Will as well as in residuals clause of the Will. Ld. Advocate for petitioner submits that properties mentioned in para 6 of the petition which reads as under :

“The Petitioner has truly set forth in Schedule – I hereto annexed and marked as Exhibit – “C” all the immovable properties and credits which the deceased died possessed of or entitled to at the time of his death which have or are likely to come to 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.

9. Ld. Advocate for petitioner submits that petitioner

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has stated on oath in para 7 of the petition3

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except Schedule–I of the Will, all other movable and immovable properties have disposed of by testator in his lifetime.

10. Other legatee namely Niraja A. Pathak, daughter-in-law of testator, who is not legal heirs of testator has consented by filing her Affidavit dated 21.02.2024 to grant Letters of Administration with Will to the petitioner. She has given her consent in the form of Affidavit, which is 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 her share in the estate of the testator. She has waived the service of Citation.

11. Petitioner has executed the administration Bond dated 21.05.2024, 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

28.06.2024

FIRST ASSISTANT MASTER