

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

CALLED FOR COMPLIANCE :

27 TP/2048/2024) Ms. Tanvi Nadkarni, Advocate for petitioner

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-) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
-) This petition is filed by petitioners, being beneficiaries
-) named under the Will executed by Ratilal Manikchand
-) Shah (herein after the same is referred to as “Testator”),
-) for grant of Letters of Administration with Will
-) annexed. Testator said to have died on 31.10.2022 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- B), Will, petitioner's oath.
-)
-) 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 petitioners are being beneficiaries named
-) under the Will. Hence, petition is tenable.
-)
-) 4. Petitioners have stated that the testator left behind
-) her last Will and Testament which was duly executed at
-) Thane on 18.02.2020, 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. 8 of the petition, as
-) per the provisions of the Hindu Succession Act, 1956.
-) Wife of the testator namely Nalini Ratilal Shah
-) predeceased to him. Testator died as issue-less. Testator
-) has only brother namely Walchand Manikchand Shah.
-) He had no sister and no other brother. Said brother of
-) the testator died on 27.08.2008 and his death certificate
-) is annexed to the petition as Exhibit – “F”. Wife of the

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said Walchand Manikchand Shah namely

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Gunmala Walchand Shah died on 17.08.2001 and her death certificate is annexed to the petition at Exhibit – “G”. Said Walchand Shah, brother of deceased died leaving behind his only son namely Prakash Walchand Shah – petitioner herein. Petitioners states on oath that said Walchand Manikchand Shah has no any other son or had no daughter. The petitioner affirmed that there are no other legal heirs of the deceased.

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 petitioners have filed the Affidavit of Gajendra Chimanlal Vasa dated 11.01.2024, 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 of Assurance, Thane – 10 under Sr. No. TNN-10/III/1475/2020. 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 as well as in residuals clause of the Will. Ld. Advocate for petitioners submits that as mentioned in para Nos. 6 and 7, which reads as under :

“6. That the Petitioners have truly set forth in Schedule No. I, hereto annexed and marked as Exhibit ‘D’, all the property and credits which the deceased died possessed of or entitled to at

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the time of his death, which have or are likely ..3

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to come to his hands.

7. That the assets of the deceased including all rents, interest and dividends which have accrued since the date of death of the deceased and increased value of the assets since the said date are of the value of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only). That some of the properties mentioned in the Will but not mentioned in this petition, which were already disposed of by the deceased during his lifetime”.

The Ld. Advocate for the petitioners 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 Will, testator has bequeathed the property mentioned in Schedule I of the petition to his nephew namely Prakash Walchand Shah – petitioner No. 1 herein and his wife namely Vijaya Prakash Shah – petitioner No. 2 herein. Testator was jointly owned (1/3 share) of the flat which was mentioned in Schedule I of the petition. Ld. Advocate for petitioner submits that as mentioned in Schedule I of the petition, remaining 2/3 undivided share owned by both the petitioners herein.

10. Petitioner has executed the Administration Bond dated 09.07.2024, 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.

08.08.2024

FIRST ASSISTANT MASTER