

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

CALLED FOR COMPLIANCE :

30 TP/2057/2024) Mr. S. U. Lakdwala, Advocate for petitioner

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-) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
-) This petition is filed by petitioner, being Sole legatee
-) named under the Will executed by Varsha Vipul
-) Kapadia (herein after the same is referred to as
-) “Testatrix”), for grant of Letters of Administration with
-) Will annexed. Testatrix said to have died on 21st
-) January, 2023 at Abhu Dhabi, U.A.E. Petitioner has
-) 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-A-1), Joint
-) 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 testatrix 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 testatrix left a writing,
-) which is her last joint Will and testament. Said Will
-) prepared jointly by Vipul Vasantlal Kapadia and Varsha
-) Vipul Kapadia, which was duly executed at Mumbai on
-) 12th December, 2019, in English language. Ld. Advocate
-) for the 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. As per Joint Will, they declare that in case of any
-) permanent disability or otherwise death of any one of
-) them, the survivor spouse will be the sole owner of all
-) the assets out of the title Will be passed on to the other
-) surviving spouse without any further action. Hence,
-) petitioner herein namely Vipul Vasantlal Kapadia is
-) being the sole legatee and filed Letters of
-) Administration with Will.

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6. Petitioner states that testatrix was survived by legal heirs shown in the paragraph No.9 of the petition, as per the provisions of the Hindu Succession Act, 1956. Testatrix died leaving behind her husband namely Vipul Kapadia - petitioner herein, only daughter namely Jhanvi Vipul Kapadia and only son namely Jishnu Kapadia. Consent Affidavits of Jhanvi Kapadia dated 22nd February, 2024 and Jishnu Kapadia dated 19th March, 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 paragraph no. 9 of the petition.

7. 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 13.05.2024. Notice to collector has been sent.

8. The petitioner has filed the affidavit of Urvashi Tarun Shah dated 28th February, 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 she 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. 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.

9. Properties mentioned in the schedule of the petition are referred in the Will. Ld. Advocate for the ...3

“That the Petitioner has truly set forth in Schedule No.I, hereto annexed marked Exhibit “C”, 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 his hands. Rest all properties referred in the Will but not claimed in the Schedule as they have been disposed of after execution of Will. So far as the Petitioner have been able to ascertain or is aware, there are no property and credits other than what are specified in the Schedule attached to the petition. Assets mentioned in the said Will but not reflected in the Schedule as they were dealt with / disbursed by the deceased during her lifetime and the same did not exist on the day of her demise and did not come to the hands of the petitioner”.

10. Petitioner has executed the Administration Bond dated 30th May, 2024, in the prescribed format. Hence, following order:

ORDER

- 08.07.2024**

