

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 24th September, 2024

CALLED FOR COMPLIANCE :

31 TP/2059/2024) Ms. Rashmi Parmar, 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 Hemanti Ramniklal
-) Shah (herein after the same is referred to as “Testatrix”),
-) for grant of Letters of Administration with Will
-) annexed. Testatrix said to have died on 24.05.2022 at
-) UAE, Dubai. 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.
-)
-) 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 behind her
-) last Will and Testament which was duly executed at
-) Mumbai on 15.12.2020, 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. Petitioner states that parents of testatrix were
-) predeceased to her and testatrix was survived by legal
-) heirs shown in the paragraph No. 10 of the petition, as
-) per the provisions of the Hindu Succession Act, 1956.
-) Husband of testatrix namely Ramniklal Shah
-) predeceased to the testatrix. He died on 01.06.1978.
-) Testatrix had two sons and only married daughter.
-) Testatrix’s two sons are namely Jeshil R. Shah and Nirav
-) R. Shah and only daughter namely Swati Rajesh Shah –
-) petitioner herein. Both sons of testatrix predeceased to
-) her. One son of the testatrix namely2

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Jeshil R. Shah died on 16.02.2020 and another son namely Nirav R. Shah died on 11.04.2000. Copies of death certificates of both sons are annexed as Exhibit “C” and “D” to the petition. Ld. Advocate for petitioner has carried out the corrections on 23.09.2024 on the basis of Affidavit filed by the petitioner dated 10.09.2024. In the said Affidavit, petitioner had stated on oath that Jeshil Ramniklal Shah was divorcee and was not having any children. Ld. Advocate for the petitioner has annexed photocopy of Judgment and Decree of divorce by mutual consent under section 13B of the Hindu Marriage Act, 1955 passed by the Hon’ble Family Court, at Bandra, Mumbai under F-534/2006 which was annexed to amended petition as Exhibit – “H” by which the petitioner affirmed that there are no other legal heirs of the testatrix other than mentioned in para No.10 of the petition. Other son namely Nirav R. Shah was unmarried.

5. 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 28.05.2024. Notice to collector has been sent.

6. The petitioner has filed the Affidavit and Additional Affidavit of Rajesh Shantilal Shah dated 24.02.2024 and 12.08.2024, 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, Borivali No.5, Mumbai City under registration No. BRL-5/III/10956/2020. 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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)
) petitioner is succeeded to prove the execution of Will.

)
) 7. 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 petitioner submits that as
) mentioned in para No. 8 of the petition, which reads as
) under :

) “That the Petitioner has truly set forth in Schedule
) No.I and Schedule II hereto annexed and marked
) Exhibit “E” and “F”, all the properties 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 the petitioner’s 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 petitiio

) 8. As per requisition No. 1 raised in the order dated
) 10.07.2024, which reads as “As per Will, there is locker.
) Hence, inventory of the said locker is required to be
) carried out”.

) Ld. Advocate for petitioner submits that the
) properties which are mentioned in the Will and not
) shown in the Schedule – I has been explained in para
) No. 13 of amended petition and Affidavit of petitioner
) dated 10.09.2024, she stated on oath that locker is
) mentioned in the Will of the testatrix, which is in the
) name of testatrix jointly with the Petitioner. Hence,
) inventory of the said locker is not required to be carried
) out.

) 9. As per requisition No. 2 raised in the order dated
) 10.07.2024, which reads as “On page No.8 of the Will,
) there is averment of joint Will, right-hand thumb
) impression and also mentioned the word ‘Executrix’.
) Advocate to explain”.

) Ld. Advocate for petitioner submits as stated on oath
) in Petitioner’s Affidavit dated 10.09.2024 and amended
) petition petition. She has clarified that it is inadvertently
) typed in the Will. It is not joint Will.

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10. As per requisition No. 3 raised in the order dated 10.07.2024, which reads as “As per Will, testatrix has two sons namely Jeshil Ramniklal Shah and Nirav Ramniklal Shah. Legal heirs of the same is required to be incorporated in the petition and there is no averment also in para 10 of the petition”.

Ld. Advocate for petitioner has carried out corrections and complied with the same accordingly. Ld. Advocate for petitioner has carried out the corrections on the basis of Affidavit filed by the petitioner dated 10.09.2024. In the said Affidavit, petitioner had stated on oath that Jeshil Ramniklal Shah was divorcee and was not having any children. Ld. Advocate for petitioner has annexed photocopy of Judgment and decree of divorce passed by the Hon’ble Family Court, at Bandra, Mumbai under F-534/2006. Other son namely Nirav R. Shah was unmarried.

11. As per requisition No. 4 raised in the order dated 10.07.2024, which reads as “Name of testatrix is shown on the death certificate is Hemanti Ramniklal Shah “Gamanlal Lakdwala” hence, Advocate to explain why ‘Gamanlal Lakdwala’ is added in her name”.

Ld. Advocate for petitioner submits that as per amended petition and Affidavit of petitioner dated 10.09.2024, petitioner has stated on oath that the testatrix father name was added in the death certificate after the name of testatrix. The pancard of the testatrix is enclosed in the petition on page No. 24 in which father name of testatrix was mentioned.

12. As per requisition No. 5 raised in the order dated 10.07.2024, which reads as “To comply with the provisions of rule 383 of the Bombay High Court (Original Side) Rules, 1980”.

Ld. Advocate for petitioner has filed Additional Affidavit of Attesting Witness namely Rajesh Shantilal Shah dated 12.08.2024 in support of execution of Will and complied with the same.

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13. As per requisition No. 6 raised in the order dated 10.07.2024, which reads as “In the Schedule, there is averment of 50% ownership rights of the testatrix and not mentioned remaining 50% ownership of whom”.

Ld. Advocate for petitioner has carried out corrections in Schedule annexed to the petition and complied with the same.

Ld. Advocate for petitioner submits that she has carried out the corrections in the petition as per the Affidavits filed by the petitioner dated 15.07.2024 and 10.09.2024.

Ld. Advocate for petitioner have filed Affidavits of petitioner dated 12.08.2024 and 10.09.2024 and complied with all requisitions. Hence, Letters of Administration with Will shall be granted in favour of petitioner.

14. Petitioner has executed the Administration Bond dated 30.05.2024, 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.

24.09.2024

FIRST ASSISTANT MASTER