

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

CALLED FOR COMPLIANCE :

31 TP/2063/2024) Ms. Prajakta Gaonkar i/b. Ms. Rucha Jog, Advocate for
) petitioner
)
)

-) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being one of the
) legatees named under the Will executed by
) Madhusundan Raghunath Phatak (herein after the same
) is referred to as “Testator”), for grant of Letters of
) Administration with Will annexed. Testator said to have
) died on 21st October, 2014 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-A-1), Will,
) petitioner's oath, affidavits of legal heirs of the testator.
)
) 2. The petitioner has explained the delay in paragraph
) No. 10 of the petition vide 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 the legatees named
) under the Will. Hence, petition is tenable.
)
) 4. Petitioner stated that the testator left behind his
) Will and Testament which was duly executed at
) Mumbai on 23rd May, 1996, in Marathi language. Ld.
) Advocate for the petitioner has filed her affidavit dated
) 5th July, 2024 and stated on oath that she having
) knowledge of both the languages namely Marathi and
) English. Hence, translation which was annexed to
) petition is true and correct. This is in compliance with
) order passed by the Hon’ble Court dated 10.01.2024 in
) Testamentary Petition No. 1263 of 2023. 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. Petitioner states that parents of testator were
) predeceased to him and testator was survived by2

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) legal heirs shown in the paragraph No.9 of the petition,
) as per the provisions of the Hindu Succession Act,
) 1956. Testator died leaving behind wife namely
) Mangala Phatak, two daughters namely Asha Joshi,
) Smita Datar and only son namely Shrikrishna Phatak -
) petitioner herein. Consent Affidavits of Mangala
) Phatak, Asha Joshi and Smita Datar, all dated 16th
) February, 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 testator.
) They have waived the service of Citation. The
) petitioner affirmed that there are no other legal heirs of
) the testator other than mentioned in para 9 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 31st May, 2024. Notice
) to collector has been sent.

) 7. The petitioner has filed the affidavits of Prakash
) Anand Datar dated 16th February, 2024 and Mohan
) Babaji Bhide dated 15th February, 2024, both are being
) Attesting Witnesses to the Will, in the Form No.102 of
) the Bombay High Court (Original Side) Rules, 1980.
) Attesting witnesses deposed that they were present and
) testator signed on the Testament papers in presence of
) both of them. According to them, 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, 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. Ld. Advocate for the3

“6. That the Petitioner has truly set forth in Schedule hereto annexed and marked Exhibit “C”, all the 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 his hands.

Hence, properties available to the testator at the time of his death are mentioned in the schedule of the petition.

10. Petitioner has executed the Administration Bond dated 22nd June, 2024, in the prescribed format. Hence, following 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.

