

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

CALLED FOR COMPLIANCE :

34 TP/2159/2024) Mr. Prabhu Velar, Advocate for petitioner
)
) **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 Cheryl Ann Rajan
) (herein after the same is referred to as “Testatrix”), for
) grant of Letters of Administration with Will annexed.
) Testatrix said to have died on 16.11.2023 at Mumbai.
) 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-
) A1), Will, petitioner's oath, Affidavits of legal heirs of
) the testatrix.
)
) 2. The petitioner has filed the present 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 07.07.2013, in English language. Ld.
) Advocate for petitioner submits that the original Will
) No. 874 of 2024 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. 9 of the petition, as
) per the provisions of the Indian Succession Act, 1925.
) Ld. Advocate for petitioner has carried out amendment
) on 11.09.2024. Petitioner has stated on oath that Father
) of testatrix namely Richard William Elmes died on
) 10.01.2013 and mother of testatrix namely Bessie
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...2

34 TP/2159/2024

– 2 –

7. The Hon'ble Court has passed the order dated 26.07.2024 and accepted the Affidavit of third party witness namely Inderraj Attarchand Talwar dated 11.03.2024 and directed department to proceed with Testamentary Petition in accordance with law and rules. Relevant paras of the said order passed by Hon'ble Court reads as under :

“4. Inderraj Attarchand Talwar, the third party witness, who claims to have witnessed the execution and attestation of the Will by the testatrix, has filed an affidavit. In the affidavit, the third party witness has affirmed that on 7 th July 2013, he was present at the residence of the Testatrix alongwith above named attesting witnesses. The Testatrix had written the Will in her handwriting, thereafter the Testatrix subscribed her signature at the foot of the Will and, thereupon, in his presence and in the presence of the Testatrix, both the attesting

CONTD...

34 TP/2159/2024

witnesses had subscribed their signatures to the writing.3

– 3 –

The third party witness affirms that the Testatrix was of sound and disposing mind, memory, and understanding and to the best of his belief, the testatrix made and published the testamentary writing out of her free will and pleasure.

5. In view of the documents on record and the affidavit of third party witness Inderraj Attarchand Talwar, I am satisfied that the provisions contained in Rule 384 of the Bombay High Court, Original Side Rules, 1980, have been complied with.

6. The Affidavit of the third party witness Inderraj Attarchand Talwar be accepted, and the Department to proceed with the Testamentary Petition in accordance with law and Rules”.

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 as mentioned in Para No. 6 of the petition, which reads as under :

“That the Petitioner has truly set forth in Schedule No. I hereto annexed and marked Exhibit “E” all the property and credits which the deceased possessed or was entitled to at the time of her death, which have or are likely to come to the hands of the petitioner. So far as the Petitioner has been able to ascertain or is aware, there are no property and credits other than what is specified in the Schedule attached to the petition”.

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 petition.

9. As per requisition No. 1 raised in the order dated 11.07.2024, which reads as “To explain the provisions of rule 397 of the Bombay High Court (Original Side)

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Rules, 1980”.

.....4

34 TP/2159/2024

– 4 –

Ld. Advocate for petitioner has carried out amendment on 11.09.2024 and complied with the same.

10. As per requisition No. 2 raised in the order dated 11.07.2024, which reads as “To explain the provisions of rule 384 of the Bombay High Court (Original Side) Rules, 1980”.

As per the order passed by the Hon’ble Court dated 26.07.2024, the requisition has been complied with.

11. As per requisition No. 3 raised in the order dated 11.07.2024, which reads as “Under the Will, there are some directions to be complied with. Advocate to explain”.

Ld. Advocate for petitioner has filed Affidavit of petitioner dated 10.09.2024 and stated on oath that he has complied with her wishes mentioned in the Will. Also, PPF Accounts mentioned in the Will have been closed and hence, not included in Schedule-I of the petition.

12. Petitioner has executed the Administration Bond dated 16.05.2024, 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.

24.10.2024

FIRST ASSISTANT MASTER

