

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 25th September, 2024

CALLED FOR COMPLIANCE :

23 TP/2447/2024) Ms. Neha Patil i/b. Vivaka Partners, 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 Anilkumar
) Chhaganlal Kavia (herein after the same is referred to
) as “Testator”) for grant of Letters of Administration
) with Will annexed. Testator said to have died on
) 12.09.2020 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-A1), Will, petitioner's
) oath.
)
) 2. The petitioner has explained the delay in para
) No.12 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 petitioner is being sole legatee named
) under the Will. Hence, petition is tenable.
)
) 4. Petitioner stated that the testator left behind his last
) Will and Testament which was duly executed at
) Mumbai on 16.03.2020, 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 testator were
) predeceased to him and testator was survived by legal
) heirs shown in the paragraph No. 7 of the petition, as
) per the provisions of the Hindu Succession Act, 1956.
) Testator died leaving behind his wife namely Pushpa
) Anilkumar Kavia – petitioner herein. He died issue-
) less. The petitioner affirmed that there are no other legal
) heirs of the testator other than mentioned in para No. 7
) of the petition.

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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 22.07.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit and Additional Affidavit of Nitin Maheshwar Thakur dated 26.08.2024 and 09.09.2024 respectively, 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 Attesting 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 deposed that at the time of execution of the Will, the contents of the Will were explained to the testator in Gujarati language and the same was understood by him. Thereafter, testator subscribed his signature in Gujarati language on the Will. Hence, there is compliance of Rule 419 of the Bombay High Court (Original Side) Rules, 1980 is complied with. 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.

Ld. Advocate for petitioner will upload copy of Will, which will have testator's signature at the bottom of both pages of Will within two weeks from today.

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 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 'C', all the property and credits3

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which the deceased died possessed of or entitled to at the time of his death, which have or are likely to come to her hands”

The Ld. Advocate for the petitioner submitted that properties available to the testator at the time of his death are mentioned in the Schedule – I of the petition.

9. Petitioner has executed the Administration Bond dated 06.08.2024, 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.

s

25.09.2024

FIRST ASSISTANT MASTER