

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 1st August, 2024

CALLED FOR COMPLIANCE :

30 TP/2493/2024) Mr. Manoj Maruti Mane, 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 Nagesh Raoji Desai
) (herein after the same is referred to as “Testator”), for
) grant of Letters of Administration with Will annexed.
) Testator said to have died on 27th 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 para No.
) 10 of the petition 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 13th February, 2014, 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 predeceased
) to him and testator was survived by legal heirs shown in
) the paragraph No.8 of the petition, as per the provisions
) of the Hindu Succession Act, 1956. Wife of the testator
) namely Neela Nagesh Desai died on 17th August, 2009
) and her death certificate is annexed to the petition at
) Exhibit-D. Testator died leaving behind two daughters
) and one son. Testator’s two daughters are namely Smita
) Sudhir Kabadli - petitioner herein, Sunetra Sunil Samant
) and only son namely Kiran Nagesh Desai.2

7. The petitioner has filed the Affidavit of Gurudas Pandurang Tendulkar, 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 put his thumb impression 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 appeared to have been executed in a language other than the language known to the testator. Attesting Witness deposed that at the request of the testator the entire “Will” was read over and fully explained by Kesahv Govind Prabhudesai, another Attesting Witness of the Will, to the testator in Marathi language and after fully understanding the contents of the Will, testator affixed his photograph and near the photograph, he affixed his thumb impression. Hence, there is sufficient compliance of Rule 419 of the Bombay High Court (Original Side) Rules, 1980. Will is duly registered before Joint Sub-Registrar, Borivali No.9, Mumbai Suburban, under Registration No. BRL-9-III/997/2014. Attesting witness further deposed that at the time of execution of3

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) 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 - I of the
) petition are referred in the Will. Ld. Advocate for the
) 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 credits which the deceased died
) possessed of or entitled to at the time of his death
) which have or are likely to come to the Petitioner
) 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. Ld. Advocate for the petitioner submits that as
) mentioned in para no. 11 of the petition by the
) petitioner that the property is under development and
) new premises is not yet been given in lieu of old
) tenement. Hence, petitioner had calculate present value
) of the tenement on basis of monthly rent and paid court
) fees accordingly. The said averment also reflected in
) Schedule-I of the petition.

) 10. Petitioner has executed the Administration Bond
) dated 19.07.2024, 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.

01.08.2024

FIRST ASSISTANT MASTER

