

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 2nd August, 2024

CALLED FOR COMPLIANCE :

42 TP/2659/2024) Ms. Swati Mathkar, 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 Lily Mark D'souza
) (herein after the same is referred to as "Testatrix"), for
) grant of Letters of Administration with Will annexed.
) Testatrix said to have died on 24.09.2015 at Mumbai.
) 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, Affidavits of legal heirs of the
) testatrix.
)
) 2. The petitioner has explained the delay for filing the
) present petition in para No. 9 of the petition as per Rule
) 382 of the Bombay High Court (Original Side) Rule,
) 1980 (for short "Rules").
)
) 3. The testatrix has appointed Bernadina Sequeira, as
) sole executrix in her Will. The said executrix has
) renounced her rights as executrix to apply for Probate.
) Affidavit of renouncement executorship by said
) Bernadina Sequeira dated 07.03.2024 is on record. 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 01.01.2014, 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 testatrix were
) predeceased to her and testatrix was survived by legal
) heirs shown in the paragraph No. 8 of the petition, as
) per the provisions of the Indian Succession Act,2

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) 1925 applicable to Christian / Catholic. Husband of
) testatrix namely Mark Jerome D'souza died on
) 19.11.2012. Copy of death certificate of husband of
) testatrix is annexed to the petition at Exhibit – "E".
) Testatrix died issue-less. Testatrix has sister namely
) Celine Sequeira. Testatrix has no brother and no other
) sister. Said Celine Sequeira sister of testatrix died on
) 29.12.2010 and her husband predeceased to her. The
) said Celine Sequeira died leaving behind her only
) daughter namely Irene D'souza – petitioner herein. Said
) sister of the testatrix had no son and no other daughter.
) Ld. Advocate for petitioner submits that as mentioned
) in para No. 2 of the Will by testatrix that by immediate
) relations of persons is only Irene D'souza – petitioner
) herein. She further submits testatrix died issue-less. She
) undertakes to upload the corrected petition during the
) course of the day. The petitioner affirmed that there are
) no other legal heirs of the testatrix other than
) mentioned in para 8 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 18.06.2024. Notice to
) collector has been sent.

) 7. The petitioner has filed the affidavit of Akhilkumar
) Poojari dated 07.03.2024, 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. 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 and petitioner is
) succeeded to prove the execution of Will.3

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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 6 of the petition, which reads as under :

“That the Petitioner has truly set forth in Schedule No.I, hereto annexed and marked Exhibit “D”, all the property 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 Petitioner’s hands. So far as the Petitioner has been able to ascertain or is aware, there are no Property and credits other than what are specified in the Schedule attached to the petition. That the property, mentioned in the Will, but not mentioned in the Schedule annexed to the petition, might have been dealt with by the deceased during her life time”

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. Ld. Advocate for petitioner submits that as mentioned in para 5 of the Will, wherein testatrix had directed to pay her debts, estate duty and liabilities. Ld. Advocate for petitioner further submits that petitioner has already filed Administrator’s oath and has been undertake to comply with the same as per Will.

10. Ld. Advocate for petitioner submits that as per the order passed by the Hon’ble Court in Testamentary Petition No. 2918 of 2023 on 02.02.2024, the Hon’ble Court directed that where all the surviving legal heirs of the deceased are petitioners before the court and right and interest of no other legal heirs is required to be protected. Then, the department shall not insist on furnishing the Administration Bond. Therefore, Administration Bond is not filed in this matter. Hence, following order:

ORDER

1) Petition is granted.

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- 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.

02.08.2024**FIRST ASSISTANT MASTER**