

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

CALLED FOR COMPLIANCE :

- 39 TP/2679/2024) Ms. Shaheen Sayed /b. S. K. Pise, Advocate for
) petitioner
) **P.C.:**
)
) 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner namely Mumtaj
) Mohammed Yunus Shaikh, being one of the
) beneficiaries named under the Will executed by Fatmabi
) Saraf Ali (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 30.11.2019
) at Mira Road, Thane. Petitioner filed the copy of death
) certificate (which is annexed to petition as Exhibit-A),
) identity proof of the testatrix (which is on page No. 16
) of the petition), Will, petitioner's oath, Affidavits of
) legal heirs of the testatrix.
)
) 2. The petitioner has explained the delay Para No. 11A
) as per Rule 382 of the Bombay High Court (Original
) Side) Rule, 1980 (for short “Rules”). Ld. Advocate for
) petitioner has carried out the corrections and add para
) No. 11A of the petition to explain the delay.
)
) 3. The testatrix has not appointed Executor to execute
) the Will. The petitioner is being one of the beneficiaries
) 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 22.12.2014, in English language. Ld. Advocate for
) petitioner submits that the original Will No. 1092 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. 7 of the petition, as per
) the provisions of the Mohammedan Law applicable to
)

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7. The petitioner has filed the Affidavit and additional Affidavit of Kaneez Fatima Mohd. Rafiq dated 24.01.2024 and 11.10.2024, one of Attesting Witness to the Will, in the Form No.102 of the Bombay High Court (Original Side) Rules, 1980. Attesting Witness deposed

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that she was present and testatrix put her thumb impression on the Testament papers in3

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presence of her and another witness. According to her, 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 Rules. Attesting Witness deposed that the contents of the said Will has been read over to testatrix and explained in Hindi language. She understood the contents of the Will before its execution and then put her thumb impression on the Will. Hence, there is compliance of Rule 419 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.

8. Properties mentioned in the schedule of the petition are referred in the Will. Ld. Advocate for petitioner submits that as mentioned in para No. 5 of the petition, which reads as under :

“That the Petitioners have truly set forth in Schedule No.I hereto annexed and marked as Exhibit – “D” all the properties 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 hands”.

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.

Ld. Advocate for petitioner submits that as per Will, testatrix has bequeathed property mentioned in Schedule-I of the petition to Mumtaz Mohammed Younis Shaikh – petitioner herein and Shenaz Nisar Ahmed Shaikh in equal share. One of the beneficiaries namely Shenaz Nisar Ahmed Shaikh died on 31.05.2023. She died leaving behind her husband namely Shaikh Nisar Ahmed Bashir Ahmed, only

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daughter namely Sana Adnan Parmar and only son
namely Shaikh Ejaz Nisar Ahemed.4

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Consent Affidavits of Shaikh Nisar Ahmed Bashir
Ahmed, Sana Adnan Parmar and Shaikh Ejaz Nisar
Ahemed are on record.

9. Petitioner has executed the Administration Bond
dated 29.06.2024, 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.

25.10.2024

FIRST ASSISTANT MASTER