

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 15th October, 2024

CALLED FOR COMPLIANCE :

32 TP/2814/2024) Mr. Prabhu Velar i/b. Nisarg Mehta, Advocate for
) petitioner

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) **P.C.:**

) 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner for Letters of
) Administration (De-Bonis Non) with Will annexed
) executed by Navinchandra Kantilal Morakhia. Said
) testator said to have died on 04.05.2006 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.

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) 2. The petitioner has explained the delay in filing the
) present petition in para No. 11 of the petition as per
) Rule 382 of the Bombay High Court (Original Side)
) Rule, 1980 (for short "Rules").

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) 3. Testator has appointed Tarlaben N. Morakhia, wife
) as sole executrix. Petition has been filed by sole
) executrix having Testamentary Petition No. 798 of 2008
) and probate has been granted by this Hon'ble Court on
) 22.01.2009 in favour of said Tarlaben Morakhia being
) sole executrix named under the Will having effect
) throughout the State of Maharashtra.

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) Said Tarlaben Morakhia, sole executrix died on
) 09.02.2017 without administering the property which
) was mentioned in Schedule I of the the said petition.
) Her death certificate is annexed to the petition as
) Exhibit C. Petitioner being one of the legatees named
) under the Will has filed this letters of Administration
) (De-Bonis Non) with Will annexed in respect of un-
) administered immovable property.

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) Ld. Advocate for petitioner submits that as per
) clause No. 8.1 of the Will, Testator has given right to
) occupy flat to his wife namely2

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Tarlaben Navinchandra Morakhia till she alive, for her lifetime in the flat mentioned in Schedule I of the petition. Thereafter, the said flat has been bequeathed to grandson of the testator namely Siddhant Sachin Morakhia – petitioner herein.

4. Petitioner stated that the testator left behind his last Will and Testament which was duly executed at Mumbai on 05.07.2004, in English language. Ld. Advocate for petitioner submits that the original Will is already handed in separately in Testamentary Petition No. 798 of 2008 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. 8 of the petition, as per the provisions of the Hindu Succession Act, 1956. Wife of the testator namely Tarla Morakhia died on 09.06.2017. Testator died leaving behind his son namely Sachin Navinchandra Morakhia and daughter namely Sujata Haresh Zaveri. Consent Affidavits of Sachin Navinchandra Morakhia and Sujata Haresh Zaveri both dated 06.09.2024 are on record. They have given their consents in the form of Affidavits, which are filed on the record by the petitioner and consented for the issuance of Letters of Administration with Will annexed in favour of the petitioner without justifying any surety in respect of their shares in the estate of the testator. They have waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the testator other than mentioned in para No. 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 22.07.2024. Notice to collector has been sent.

This petition is debonis non petition, Will is

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already proved in earlier

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Testamentary Petition No. 798 of 2008 and wherein the grant of Probate dated 22nd January, 2009 was issued by this Hon'ble Court to Tarlaben Navinchandra Morakhia.

7. Properties mentioned in the Schedule – I of the petition is property which was unadministered immovable property of the testator as mentioned in para No. 6 of the petition, which reads as under :

“That the Petitioner has truly set forth in Schedule – I hereto annexed and marked Exhibit – “D” is the un-administered immovable property of the deceased which the said deceased died in possessed of or was entitled to at the time of his death, which have or are likely to come to the Petitioner's hand”.

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.

8. Ld. Advocate for petitioner submits that petitioner in Testamentary Petition No. 798 of 2008 had administered property of testator as per Will as stated on oath by petitioner in para Nos. 12 and 15 of the petition except a property which was mentioned in Schedule – I of this petition. Hence, petitioner has mentioned only un-administered immovable property in Schedule I annexed to the petition.

Ld. Advocate for petitioner submits that as per Will testator had given rights to occupy the flat mentioned in Schedule I of the petition to her wife namely Tarlaben N. Morakhia and after her death, the said property has been bequeathed to Siddhant Morakia – petitioner herein. Wife of the testator namely Tarlaben Morakhia died on 09.06.2017. Hence, petitioner herein being one of the legatees filed this petition for Letters of Administration with Will. Hence, same should be granted in favour of the petitioner.

9. Petitioner has executed the Administration Bond

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ORDER

- 1) Petition is granted.
- 2) Office to issue Letters of Administration (De-Bonis-Non) 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.

FIRST ASSISTANT MASTER