

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 19th September, 2024

CALLED FOR COMPLIANCE :

54 TP/3193/2024) Ms. Kusum Poojary, Advocate for petitioner
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being one of the
) legatees named under the Will executed by Hemalata
) Dattatraya Khale (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 13.07.2021
) 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 filed petition within prescribed
) limit as per Rule 382 of the Bombay High Court
) (Original Side) Rules, 1980 (for short “Rules”).
)
) 3. The testatrix has not appointed executor to execute
) the Will. The petitioner is being one of the legatees
) 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 06.10.2016 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 husband of testatrix was
) predeceased to her and testatrix was survived by legal
) heirs shown in the paragraph No. 9 of the petition, as
) per the provisions of the Hindu Succession Act, 1956.
) Testatrix died leaving behind one married daughter and
) two sons. Testatrix’s married daughter namely Shilpa
) Sagar Gosavi and two sons namely Milind D. Khale and
) Ashish D. Khale – petitioner herein. Consent Affidavits
) of Shilpa Sagar Gosavi dated 13.03.2024 and2
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Milind D. Khale dated 25.04.2024 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 testatrix. They have waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the testatrix other than mentioned in para No. 9 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 05.08.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Sachin Rajaram Shelar dated 15.03.2024, 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. Will is duly registered before the Joint Sub-Registrar, Kurla - 4, under registration No. KRL-4-III-9411/2016. 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 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 the Schedule No. I, hereto annexed and3

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) marked Exhibit “C” all the properties and
) credits which the deceased died possessed or
) entitled to at the time of her death and which
) have or are likely to come to the Petitioner’s
) 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.

) 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.

19.09.2024

FIRST ASSISTANT MASTER