

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 9th October, 2024

CALLED FOR COMPLIANCE :

21 TP/3385/2024) Mr. Sameer Logade, 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
) Dineshchandra Dhudalal Shah (herein after the same is
) referred to as “Testator”), for grant of Letters of
) Administration with Will annexed. Testator said to have
) died on 11.10.2020 at Gujarat. 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- B), Will along with its
) official translation, 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 one of the legatees
) 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 Gujarat
) on 08.09.2020, in Gujarati language. Its official
) translation is filed on the record. Ld. Advocate for
) petitioner submits that the original Will No. 1366 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 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.
) Testator died leaving behind his wife, two sons and one
)

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daughter.

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21 TP/3385/2024

- 2 -

Testator's wife namely Bharatiben D. Shah and two sons namely Shailesh D. Shah – petitioner herein, Sanjay D. Shah and only married daughter Shilpa Raxitkumar Mehta. Consent Affidavits of Bharatiben D. Shah, Sanjay D. Shah and Shilpa Raxitkumar Mehta all dated 02.05.2023 are on record. They have given their consents in form of Affidavits, which are filed on 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 12.08.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Atulbhai Popatlal Shah dated 02.05.2024, 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 testator 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 Sub-Registrar, Surat City – 1 (Athwa) under registration SRT/1/ATV/9384/2020. Attesting witness further deposed that at the time of execution of 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 of the petition

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are referred in the Will as well as in residuals3

21 TP/3385/2024

– 3 –

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 Schedule No. I, hereto annexed and marked as Exhibit – “D”, 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 his 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 petitioner submits that as mentioned in para No. 7 of the petition, some of the properties which are mentioned in the Will but not shown in Schedule I of the petition, which were already disposed of by the testator during his lifetime. Petitioner has claimed only properties which was mentioned in the Schedule – I annexed to the petition.

10. As per Will, there are beneficiaries namely Pinki Sanjay Shah, Riya Shailesh Shah, Sanya Shailesh Shah, Minal Shailesh Shah, Kevin Sanjay Shah, Niken Sanjay Shah. They have filed their Consent Affidavits all dated 02.05.2024, which are on record. They have given their consents in form of Affidavits, which are filed on 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.

11. Petitioner has executed the Administration Bond dated 28.09.2024, in the prescribed format. Hence, following order:

ORDER

- 1) Petition is granted.
- 2) Office to issue Letters of Administration with Will

CONTD....

21 TP/3385/2024)

annexed as per the provisions of the Indian Succession Act, 1925 to the petitioner and upon satisfaction4

– 4 –

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.

09.10.2024

FIRST ASSISTANT MASTER