

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 30th September, 2024**

CALLED FOR COMPLIANCE :

58 TP/3636/2024) Mr. S. U. Lakdwala, 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 Kalpana Harshadrai
) Parekh (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 05.03.2021
) at Gujarat. 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 along with its official translation,
) petitioner's oath, Affidavits of legal heirs of the
) testatrix.
)
) 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 testatrix has not appointed Executor to execute
) the Will. 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 02.03.2021, in Gujarati language. Its
) official translation is filed on the record. Ld. Advocate
) for petitioner submits that the original Will No. 1419 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. Testatrix was survived by legal heirs shown in the
) paragraph No. 8 of the petition, as per the provisions of
) the Hindu Succession Act, 1956. Testatrix died leaving
) behind her husband namely Harshadrai P. Parekh –
) petitioner herein and one son and two daughters.
) Testatrix only son Keyur Harshadrai Parekh and two
) daughters namely Nidhi Hardshadrai Parekh2

7. The petitioner has filed the Affidavit of Sejal Bhavesh Sheth dated 23.05.2024, 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 she was present and testatrix signed on the Testament papers in 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 Bombay High Court (Original Side) Rules, 1980. Attesting Witness deposed that she was present on 02.03.2021 alongwith Nidhi H. Parekh at the residence of testatrix then they saw testatrix has subscribed her signature at the foot of the testament papers in the Gujarati language and character being handwritten by testatrix. 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 residuals3

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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 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 his hands. So far as the Petitioner have 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. Jewellery referred in the Will but not claimed in the Schedule as they have been disposed of immediately after execution of Will and there was no other jewellery held by Testatrix at the time of death of testatrix. Rest all properties mentioned in the said Will but not reflected in the Schedule as they are jointly held nomination and did not come to the hands of the Petitioner hence not claimed”.

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. As per Will, ornaments which had with testatrix has been distributed to her daughter namely Sejal Bhavesh Sheth, Nidhi H. Parekh and daughter-in-law Chaitali during her lifetime and testatrix mentioned in the Will besides this, if she had any ornaments then the same shall have to be given to her granddaughters namely Riya and Mishika. Ld. Advocate for petitioner submits that in the joint Consent Affidavits of the legal heirs, they have stated on oath that at the time of her death there are no jewellery left by the testatrix hence, question of unpaid legacy does not arise. Statement accepted.

10. Petitioner has executed the Administration Bond dated 06.09.2024, in the prescribed format. Hence, following order:

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ORDER

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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.

30.09.2024**FIRST ASSISTANT MASTER**