

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 1st October, 2024**

CALLED FOR COMPLIANCE :

46 TP/3816/2024) Ms. Bina Shivhare, 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 Mahendra
) Dhirajlal Kapadia (herein after the same is referred to as
) “Testator”), for grant of Letters of Administration with
) Will annexed. Testator said to have died on 11.03.2012
) 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, Affidavits of legal
) heirs of the testator..
)
) 2. The petitioner has explained the delay in para
) No.12 of the petition as per Rule 382 of the Bombay
) High Court (Original Side) Rule, 1980 (for short
) “Rules”).
)
) 3. The testator has appointed two executors namely
) Hitesh Buch and Divyang Kapadia. Both the executors
) have renounced their rights as executors. They have
) filed their Affidavits dated 15.05.2024 (Divyang
) Kapadia) and 21.05.2024 (Hitesh Buch). They have
) renounced their rights as Executors and to file Probate.
) Copies of the said Affidavits are annexed to the petition
) as Exhibit “C” and “C-1”. Hence, the petitioner being
) one of the legatees named under the Will, is entitled to
) file the present the petition.
)
) 4. Petitioner stated that the testator left behind his last
) Will and Testament which was duly executed at
) Mumbai on 05.01.2006, in English language. Ld.
) Advocate for petitioner submits that the original Will
) No. 1507 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.
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5. Petitioner states that parents and wife of testator were predeceased to him and testator was survived by legal heirs shown in the paragraph No. 9 of the petition, as per the provisions of the Hindu Succession Act, 1956. Testator died leaving behind two married daughters and one son. Testator's two married daughters are namely Mallika Ajay Divan and Rita Hemant Jain and only son namely Nilesh Mahendra Kapadia – petitioner herein. Consent Affidavits of Mallika Ajay Divan dated 15.07.2024 and Rita Hemant Jain dated 29.06.2024 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. 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 02.09.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Deepk K. Wadia dated 24.07.2024, 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. 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.3

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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. 6 of the petition, which reads as under :

“That the Petitioner has truly set forth in Schedule No.I hereto annexed and marked Exhibit “D” all the properties and credits which the deceased died possessed or entitled to at the time of his death and which have or are likely to come to the Petitioners hands. So far as the Petitioner has 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”.

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.

Ld. Advocate for petitioner submits that as stated on oath by petitioner in para No. 11 of the petition, other property stated in the Will by the testator did not belong to the testator at the time of his death therefore, they were not shown as assets of the testator in Schedule I of the petition.

9. As per Will, there is beneficiary namely Mrs. Jasmin Nilesh Kapadia. Also, four granddaughters of the testator namely Bhumi Kapadia, Dhvani Rushit Jogani, Niyati H. Parikh and Aditi A. Dalal are the beneficiaries under the Will. All the said beneficiaries are mentioned in para No. 8 of the Will. Joint Consent Affidavits of Jasmin Nilesh Kapadia, Bhumi Kapadia, Dhvani Rushit Jogani, Niyati H. Parikh dated 28.09.2024 and Consent Affidavit of Aditi A. Dalal dated 28.09.2024 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.4

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.

01.10.2024

FIRST ASSISTANT MASTER