

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

CALLED FOR COMPLIANCE :

47 TP/3871/2024) 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 Felix
) Monthu Martis (herein after the same is referred to as
) “Testator”), for grant of Letters of Administration with
) Will annexed. Testator said to have died on 10.06.2023
) 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- B), Will, petitioner's oath, Affidavits of legal
) heirs of the testator.
)
) 2. The petitioner has filed the present petition within
) prescribed limit 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
) Mumbai on 16.12.2021, in English language. Ld.
) Advocate for petitioner submits that the original Will
) No. 1528 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 Indian Succession Act, 1925.
) Wife of the testator namely Martha Felix Martis died on
) 04.12.2019 and her death certificate is annexed to the
) petition as Exhibit “E”. Testator died leaving behind
) twos sons namely Vincent Felix Martis and Allwyn
) Felix Martis – petitioner herein.2

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Testator had no any other son and no daughter. Consent Affidavit of Vincent Felix Martis dated 15.04.2024 is on record. He has given his consent in the form of Affidavit, which is 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 his share in the estate of the testator. He has 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 26.08.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Christopher Mark Fernandes dated 18.04.2024, 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 Joint Sub-Registrar, Borivali – 7 under registration No. BRL-7/III/9993/2021.

Ld. Advocate for the petitioner submits that office has raised the requisition viz. “No Attesting Witness signatures are on the Will” . Ld. Advocate for petitioner had filed praecipe dated 23.07.2024 and explained that as per reported order in Testamentary Petition No. 1967 of 2018 passed by the Hon’ble Court dated 08.01.2021, wherein the Hon’ble Court has found that the objection raised by the department is highly technical one, considering that Attesting Witnesses have filed their Affidavits stating that they were very much

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present at the time of execution of the3

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Will before the office of the Joint Registrar and have signed as witnesses on the registration page.

Ld. Advocate for petitioner submits that in this petition also Attesting Witness has deposed on oath that in para Nos. 2 and 3 of his Affidavit dated 18.04.2024 that he himself (Christopher Mark Fernandes) and Alphanso Domnic D'souza were present and in the presence of each other all being present at that time set and subscribed their respective signatures at the Summary Part II Sheet of the Joint Sub-Registrar, Borivali 7. Hence, objection has been complied with and petition has been proceeded accordingly.

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 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 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.

Ld. Advocate for petitioner submits that as stated on oath by petitioner in para No. 7 of the petition that the properties which were mentioned in the Will, but not mentioned in the Schedule I of the petition, are already disposed of by the testator during his lifetime.4

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9. Ld. Advocate for petitioner submits that this petitioner alongwith Vincent Felix Martis have filed Testamentary Petition No. 2947 of 2024 because some of the properties were possessed by the testator, but not included in the Will / not mentioned in the Will. Other petition is filed for claiming other properties of testator which was not included in Schedule I of this petition.

10. Petitioner has executed the Administration Bond dated 24.09.2024, 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.

01.10.2024

FIRST ASSISTANT MASTER