

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

CALLED FOR COMPLIANCE :

48 TP/3952/2024) Mr. K. A. Bhatia, 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 Dr.
) Tilokchandra Mukundsa Gupta (herein after the same is
) referred to as “Testator”), for grant of Letters of
) Administration with Will annexed. Testator said to have
) died on 25.03.2009 at Indore, Madhya Pradesh.
) 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.11 of the petition as per Rule 382 of the Bombay
) High Court (Original Side) Rules, 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 Indore,
) Madhya Pradesh on 07.03.2009, in Hindi language. Ld.
) Advocate for petitioner submits that the original Will
) No. 1560 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.
) Ld. Advocate for petitioner has filed his Affidavit dated
) 28.09.2024 and stated that he was sufficient proficient
) in Hindi and English languages. He can read, write and
) understand the same. Hence, translation annexed to the
) petition as Exhibit – “B1” is true and correct. This is in
) compliance of order dated 10.01.20242
)

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passed in Testamentary Petition NO. 1263 of 202 by the Hon'ble Court.

5. Petitioner states that parents 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. Father of testator namely Mukundsa G. Gupta and mother namely Rampyri M. Gupta predeceased to the testator. Testator was married to Pratibha Tilok Gupta and out of the said wedlock, they have one child namely Sapeksh Tilokchand Gupta – petitioner herein. The marriage solemnized between the testator and his wife namely Pratibha Tilok Gupta dissolved on 19th August, 1995 as per divorce decree passed by the Hon'ble Family Court No. 2, Bandra, Bombay. Copy of the said divorce decree is annexed to the petition as Exhibit – “E”. Hence, testator died as divorcee. 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 23.08.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Ajay Misrilal Namdev dated 22.06.2024 and Sanjay Ramdas Patil dated 26.06.2024, both the Attesting Witnesses to the Will, in the Form No.102 of the Bombay High Court (Original Side) Rules, 1980. They deposed that they were present and testator signed on the Testament papers in presence of both of them. According to them, 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 to3

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) 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 mentioned in para No. 6 of
) the petition, which reads as under :

) “The petitioner has truly set forth in Schedule No.
) I, hereto annexed and marked as Exhibit “C”, all
) the properties and credits which the said deceased
) died possessed of or entitled to at the time of his
) death, which have or are likely to come to his
) hands. So far as the Petitioner is able to ascertain
) or is aware there are no properties and credits
) other than what are specified in the Schedule No.
) I, annexed to the Petition. As per the said Will, the
) W.P. No. 900/1993 was filed before the Hon’ble
) High Court of Judicature at Bombay by the said
) deceased against Union of India and others. Vide
) the Hon’ble Court’s order dated 16th July, 2009,
) “the said Writ Petition No. 900 of 1993 was
) dismissed, and the Rule was discharged with no
) order as to costs.” the assets which are shown in
) the said Will of the deceased including the
) benefits of his received but not shown in the
) Schedule No. I, as the same were disposed of or
) distributed by the deceased during lifetime of the
) said deceased. Therefore, the said assets are not
) shown in Schedule No. I of 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.

) 9. Ld. Advocate for petitioner submits that property
) mentioned at Sr. No. 1, 3, 4 and 5 has been bequeathed
) by testator to his brother namely Kailash Chandra
) Gupta. Said Kailash Chandra Gupta has filed his
) consent Affidavit dated 22.06.2024 which is on record.
) He has given his consent in the form of Affidavit,
) which is filed on the record by the petitioner4

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) 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.

) Testator has bequeathed his property at Sr. No. 2 of
) paragraph No. 4 of the Will / Sr. No. 2 of the Schedule-I
) of the petition to the petitioner herein. Ld. Advocate for
) petitioner undertakes to correct the capacity of the
) petitioner and upload the corrected petition during the
) course of the day.

) This is uncontested petition hence, Ld. Advocate for
) petitioner seeks to issue Letters of Administration with
) Will in favour of petitioner.

) 10. Ld. Advocate for petitioner submits that as per
) order passed by the Hon'ble Court in Testamentary
) Petition No. 2556 and 2022 and Testamentary Petition
) No. 2559 of 2022 dated 28.02.2023, the Hon'ble Court
) has directed the Registry not insist for filing / furnishing
) of Administration Bond in all matters wherein the
) petitioner is sole legal heir, who is class I legal heirs.
) Hence, petitioner has not furnished Administration
) Bond in this matter. 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

