

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

CALLED FOR COMPLIANCE :

- 7 TP/4016/2024) Ms. Bina S. 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 Kamla
) Aildas Jaising (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 14th March,
) 1997 at Mumbai. Petitioner filed the copy of death
) certificate (which is annexed to petition as Exhibit-A),
) Will, petitioner's oath. Petitioner has filed his Affidavit
) dated 27th June, 2024 along with share certificate issued
) by Gateway Plaza Co-op Premises Society Ltd. to
) dispense with a requisition to produce an identity of the
) testatrix.
)
) 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. Testatrix has appointed Executors under her will
) namely Ram Advani and S. Bharadwaja. Both the
) executors are reported to have been died on 21st May,
) 2023 and 23rd December, 2019 respectively, without
) proving the Will. Their death certificates have been filed
) on the record and annexed to the petition as EX-C and
) EX-C-1. Hence, the petitioner is being one of the
) legatees 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 17th April, 1996, in English language. Ld.
) Advocate for petitioner submits that the original Will
) No. 1585 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 Husband of testatrix was predeceased to her and testatrix 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 leaving behind only son namely Gordhan Aildas Jaising - petitioner herein. Testatrix had no other son and no daughter. The petitioner affirmed that there are no other legal heirs of the testatrix 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 2nd September, 2024 . Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Gordhan Aildas Jaising dated 27th June, 2024 as per Rule 384 of the Bombay High court (Original Side) Rules as both the attesting witnesses have passed away. As per order passed by Hon'ble Court dated 13th September, 2024, the Hon'ble Court has permitted to file Affidavit filed by the petitioner. He deposed that on 17th April, 1996 in his presence and that of the Attesting Witnesses namely Ram Rupchand Advani and Swadesh Bharadwaja, the testatrix had set and subscribed her signature at the foot of the Will. Thereafter, the Attesting Witnesses at the request of the testatrix had put their signatures on the Will. Attesting Witness (Ram Rupchand Advani) deposed that he had explained the said Will in Hindi language to the testatrix. He further deposed that testatrix was conversant with English language but she used to sign in Hindi language. He 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 residuals clause of the Will. Ld. Advocate for the petitioner submits that

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as mentioned in para no. 6 of the petition,3

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which read 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 her 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 testatrix at time of her death are mentioned in the Schedule- I of the petition.

9. Ld. Advocate for the petitioner submits that some of the properties are mentioned in the Will but not in Schedule -I of the petition and reason for the same was stated on oath by petitioner in para no. 11 of the petition, which reads as under :

“Those other properties stated in the Will of the deceased did not belong to the deceased at the time of her death and therefore they are not shown as assets of the deceased in Schedule No. I hereto annexed”.

10. As per the Will, daughter-in-law of testatrix namely Rani Gordhan Jainsing is beneficiary. She has filed her Consent Affidavit dated 26th July, 2024, which is on record. She has given her 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 her share in the estate of the testator. She has waived the service of Citation.

11. 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

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No. 2559 of 2022 dated 28.02.2023,

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the Hon'ble Court has directed the Registry not to 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