

Before: Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date: 25th March 2025

FOR COMPLIANCE:

75. TP/404/2024 P.C. : Shri. Umair Merchant i/b M T Maskita Ld.
[Original]
(ECHCBM021949120
23)
with
WILL/181/2024

Advocate for the Petitioner

1) This petition is filed by petitioner, being sole beneficiary under the Will executed by Sarita Diniz Houston, (herein after the same is referred to as "Testatrix"), for grant of a Letters of Administration with Will annexed. Said Testatrix said to have died at Mumbai on 19-12-2019. Petitioner, namely Roland Anthony Cashen Diniz, filed the copy of death certificate, identity proof of the testator, Will, petitioner's oath.

2) Perused petition. Heard Ld. Advocate for petitioner. Perused documents.

3) The petitioner has explained the delay vide Rule 382 of the Bombay High Court (Original Side) Rule, 1980 (for short "Rules").

4) No executor has been appointed under the Will. The petitioner is the sole Legatee under the Will. Hence, petition is tenable.

5) Petitioner stated that the deceased left behind her last Will and Testament which was duly executed at Mumbai on 13.05.2016, in English language. The original Will 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.

6) Ld. Advocate for petitioner submits that

parents of deceased predeceased Testatrix and testator was survived by legal heirs, as per the provisions of Indian Succession Act, 1925. The petitioner affirmed that there are no other legal heirs of the deceased.

7) Citation to non-consenting legal heir of the deceased, namely Avaan Patel, was issued, which was sent via post, twice; however, it is returned unclaimed. Ld. advocate for the petitioner has relied upon the decision of **Hon'ble Bombay High Court passed in TP/119/2020 passed on 15.06.2023**. In this testamentary Petition, similar situation was existed and the Hon'ble Court held that citation issued to the non-consenting legal heir was intimated by the post, but returned unclaimed. Hence, it is deemed to be served. Furthermore, Ld. advocate for the petitioner has relied upon the decision of the Hon'ble Supreme Court in case of **Shalini Singh Vs. Avinash Kumar Singh having Transfer Petition (Civil) No. 1843/2023** in which it is laid down that where notice sent to addressee at his correct address but returned unclaimed, has to be accepted as served.

8) Citation was issued, which has been duly affixed on the conspicuous part of the Hon'ble High Court and notice board of the Collector's Office at Mumbai and 14 days have been expired vide Rule 397(1) and (4) of the Bombay High Court (O.S.) Rules, 1980(for short "BHC Rules") and an affidavit to that effect has been filed. Notice to collector has been issued vide Rule 396 of BHC Rules. Till today, no one appeared to resist the claim of the petitioner or nothing is brought to the notice regarding pending litigation pertaining to the same properties. Hence, the petition is treated as uncontested one.

9) The petitioner has filed the affidavit of Margaret Priscilla D'Souza one of Attesting Witnesses to the Will, in form No.102 of Bombay High Court (Original Side) Rules, 1980. He deposed that he was present and deceased signed the Testament in presence of him and another witness, after going through its contents. Hence, enough evidence is on record to accept the execution of the Will and petitioner is succeeded to prove the execution of Will. 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 Rules.

10) Properties mentioned in the schedule-I of the petition are referred in the Will.

11) Petitioner has executed the administration Bond in the prescribed format. Hence, following order:

ORDER

1) Petition is granted.

2) Office to issue Letters of Administration with Will annexed to the petitioner, upon satisfaction that the administration Bond is properly executed, as per the Rules, throughout State of Maharashtra.

3) Before issuance of 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.

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