

Before: Shri. P A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date: 09th May, 2025

FOR COMPLIANCE:

56. TP/939/2024 P. C. : Shri. D R Mishra Ld. Advocate for the Petitioner
[Original]
(ECHCBM022204820
23)
with
WILL/305/2024

1) This petition is filed by petitioner, being son of the sole legatee under the Will executed by CHANDANBEN MALUKCHAND TOLIA alias CHANDAN MALUKCHAND TOLIA (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 16/06/1992. Petitioner, namely DINESH MALUKCHAND TOLIA, filed the copy of death certificate, identity proof of the testator, Will along with its official translation, 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) The executors, namely Kishor keshavlal Doshi, Jiten Keshvlal Doshi, have not appeared to executed the Will. Hence, the petitioner has filed an Interim Application No. 2381/2024. The Hon’ble High Court has allowed the Interim Application vide an order dated 07.01.2025. Hence, the petitioner is the son of the sole Legatee under the Will. Hence, petition is tenable.

5) Petitioner stated that the deceased left behind his last Will and Testament which was duly executed at Mumbai on 28.02.1992, in Gujrati language. Its official translation is filed on the record. 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 Testatrix is survived by legal heirs, whose details are given in the petition, as per the provisions of Hindu Succession Act, 1956. The petitioner affirmed that there are no other legal heirs of the deceased, except mentioned in the petition. Legal heirs of the testatrix, excluding Jayesh, have consented to the petition and thereby waived the service of Citation.

7) Citation to non-consenting legal heirs of the deceased, namely Jayesh, was issued, which is duly served upon him on 5.06.2024 Post Service, However, non-consenting legal heir did not resist the petition.

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) Petitioner states that attesting witnesses namely (1) J. M. Desai and (2) Dr. Sumant N. Shah, both are expired. However, their death certificates are not available. He stated that he has filed an affidavit of Neela Tolia, as she was present at the time of execution of the Will. Affidavit of Said Neela is in form No.102 of Bombay High Court (Original Side) Rules, 1980. She deposed that deceased signed the Testament in her presence as well as presence of attesting witnesses, 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 her 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, renouncing the right of the Executors namely Jiten Keshvlal Doshi, alias Jeetu Bhai Doshi , 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.

09th May, 2025

**Officer on Special Duty,
with Testamentary Department**