

Before: Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date: 06th May, 2025

FOR COMPLIANCE:

93. TP/2044/2024 P. C. : Shri. D R Mishra Ld. Advocate for the Petitioner
[Original]
(ECHCBM020373720
24)
with
CHOL/49/2025
(AMH20240128707C
202400018)
with
WILL/803/2024

1) This petition is filed by petitioner, being sole beneficiary under the Will executed by LADBAI GHASIMALJI DADHA alias LAAD KANWAR DADHA alias LAD KANVAR (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 13.06.2014. Petitioner, namely RAJENDRA KUMAR DADHA alias RAJABABOO, 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 03.12.2013, 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 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.

7) Citation to non-consenting legal heir of the deceased, was issued. However, it is returned underserved. Hence, chamber order, having No. 49/2025 has been taken out to serve the Citation to non-consenting legal heir of the deceased by publishing citation in the daily newspaper namely, "Indian Express" and "Yashobhoomi". Accordingly, affidavit of service has been filed by the Ld. Advocate for the petitioner regarding service vide Rule 400 of the Rules. However, non-consenting legal heir did not resist the petition.

8) The petitioner has filed the affidavit of Nirvan Rajendrakumar Dadha being 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. The Testatrix is Hindu and therefore provisions of Sec. 67 of the IS Act would not apply. As regards to the attesting witness, Section 68 of the Indian Succession Act, 1925 provides that no person, by reasons of interest in or of this being executor of, a Will shall be disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof. Attesting Witness is a competent witness to prove execution of the Will executed by Testatrix. Hence, benefit is given, as Section 68 of the Indian Succession Act, 1925. Furthermore, the Hon'ble High Court in case of **Ruby Cyril D'souza & Ors.- (Applicants)** in the matter between **Cecilia Reynold D'souza & Ors.- (Plaintiffs) Vs. Ruby Cyril D'souza & Ors.- (Defendants)**, {Interim Application

(L)/20977/2023 in Testamentary Suit no. 05/2005 in Testamentary Petition no. 226/2004, pronounced on 24.01.2024}, it is laid down that in hearing of Testamentary Petition for grant of Probate of Letters of Administration with Will annexed issue of voidness of bequeath under Section 67 of the Indian Succession Act, 1925 in a Will due to the beneficiary being the spouse of the witness is outside the jurisdiction of the Testamentary Court. Therefore, affidavit has to be considered in order to prove the Will.

9) 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.

10) The petitioner has filed the affidavit of Nirvan Rajendrakumar Dadha one of attesting Witnesses to the Will, in form No.102 of Bombay High Court (Original Side) Rules, 1980. He deposed that deceased affixed her thumb impression in his presence as well as presence of 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 witness all additions and alteration in a Will were existed at the time of execution and before signing the Will. Furthermore, the will was explained to the deceased. Hence, there is sufficient compliance of the Rule 383 & 419 of the Rules.

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

12) 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.

06th May, 2025

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