

Before: Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date: 04th April, 2025

FOR COMPLIANCE:

64. TP/2083/2024 P.C.: Shri. Prabhu Velar Ld. Advocate for the Petitioner
[Original]
(ECHCBM0203318
2024)
with
WILL/850/2024

1. This petition is filed by petitioner, being representative of the Legatee, namely Shree Dattaguru Gramasta Mita Mandal-Nanate Dinagan Wadi (Mumbai), a sole beneficiary under the Will executed by Mahadev Hari Khambe (herein after the same is referred to as "Testator"), for grant of a Letters of Administration with Will annexed. Said Testator said to have died at Virar on 31-01-2023. Petitioner, namely Sushil Ramesh Hodbe alias Sushil Hodbe, filed the copy of death certificate, identity proof of the testator, Will and Codicil along with its official translation, petitioner's oath.

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

3. No executor has been appointed under the Will. The petitioner is the authorized representative of the sole legatee under the Will. Hence, question was raised about the maintainability of the petition, in view of Sec. 223 of the IS Act.

4. Ld. advocate for the petitioner has relied upon the decision of the Hon'ble Supreme Court in case of *Illachi Devi v. Jain Society*, (2003) 8 SCC 413 : 2003 SCC OnLine SC 1091 at page 430. In the said Judgment, the testator had bequeathed the property to the Trust. Hence, the question was before the Hon'ble Court was

whether the grant of could be issued to association as per Sec. 223 of the IS Act. It is held that the the society registered under the Registration Act, 1860 is not a body corporate or a juristic Person. Hence, it is not eligible under the said provision to receive the grant. However, probate or letters of administration can be granted to the person authorised by such society either in terms of the statute or a resolution. The Hon'ble Supreme Court has laid down that, -

“48. The apprehension of the High Court that in a case of this nature, in the event, a Letter of Administration is not granted in favour of the beneficiary society, the purport of the “Will” will be frustrated, is not wholly correct and for grant of Letter of Administration what is necessary is that the person duly authorised by the society in accordance with the law may file such an application.

49. Furthermore, the validity of Sections 223 and 236 of the Act is not in question. So long the said provisions are not declared unconstitutional, the same must be allowed to hold their field.

50. We may state that, as noticed hereinbefore, in terms of the rules framed by the States under the Societies Registration Act, a society may sue or may be sued through its President or Secretary or in the absence of any specific provisions in that behalf, any person authorised by the society.

51. Grant of probate in favour of a society registered under the Societies Registration Act is refused, as discussed hereinbefore, inter alia on the ground that it is not a juristic person. It, in a litigation, must be represented

through a person authorised in this behalf either in terms of its bye-laws or otherwise.

52. We, however, intend to lay emphasis on the fact that a Will or gift in favour of a society is not totally unenforceable in law. A probate or Letter of Administration with a copy of the Will annexed although may not be granted in favour of a society but may be granted in favour of a person authorised by a society either in terms of the statute or a resolution adopted in this behalf by the society, as the case may be, so that such person may be answerable to the court. On grant of a Letter of Administration the person so nominated by the society shall carry out the wishes of the testator for the benefit of the society."

5. The petitioner has produced the Copy of the Resolution dated 11.10.2023(Ex.C) by the said resolution, the petitioner being Secretary of the Trust is authorized to present this petition and authorised to sign the petition and other documents which are necessary for the receipt of the Grant. Furthermore, the Schedule-I of the Trust, issued by the Public Trusts Registration Office for the Greater Mumbai, is produced, vide a praecipe dated 26.03.2025. Ld. advocate for the petitioner made a statement that committee of the trust is not changed since 2017 and said committee is managing the Trust as per the Provisions of the Maharashtra Public Trust Act, 1950. Submission is taken on the record. Furthermore, interest is also being secured as copy of the Will is served upon the office of Charity Commissioner, Maharashtra State Mumbai.

6. Hence, the petitioner is authorized person of the beneficiary Trust and therefore the Law

laid down by the Hon'ble Supreme Court in above referred Judgment is applicable to the present petition.

7. Petitioner stated that the deceased left behind his last Will and Testament which was duly executed at on 20.06.2013, in Marathi 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.

8. Ld. Advocate for petitioner submits that parents of deceased predeceased testator and testator was survived by legal heirs, as per the provisions of Hindu Succession Act, 1956. The petitioner affirmed that there are no other legal heirs of the deceased. Legal heirs of the testator have consented to the petition and thereby waived the service of Citation.

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 Mahesh Temkar 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.

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.

04th April, 2025

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