

**Before: Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date: 28th April, 2025**

FOR COMPLIANCE:

122. TP/3878/2024 P. C. : Ms. Pranali Raut i/b Rahul Singh Ld. Advocate
[Original]
(ECHCBM020999920
24)
with
WILL/1535/2024

for the Petitioner

- 1) This petition is filed by petitioner, being sole beneficiary under the Will executed by Padmaja Chitrabhanu Pathak (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 Navi Mumbai on 12-05-2015. Petitioner, namely Jayshri Shirish Chitre, 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 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 on 21.03.2013, 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 parents of deceased predeceased Testatrix and testator was survived by legal heir, as per the provisions of Hindu Succession Act, 1956.
- 7) Legal heirs of the testatrix is mentally Retired person and the petitioner has obtained certificate under the provisions of the National Trust Act, 1999. Ld. advocate for the

petitioner submitted that on the basis of this certificate, the petitioner being the guardian had obtained a Letters of administration, in Testamentary Petition No. 2060/2018. Thereafter, this will found and therefore, the petitioner had taken out an Misc. Petition, having No. (L)8918/2024, and revoked the earlier grant. In the said petition, the Hon'ble Court vide an order dated 21.03.2024, has recognized the petitioner as the guardian of the said Keyur. In this regard, Ld. advocate for the petitioner, has pointed out the provision of the Sec. 14 and 15 of the Said Act. According to which, Guardian to be appointed vide Sec. 14 of the said Act and Duties of the Guardian is explained vide Sec. 15 of the Said Act. Sec. 15 of the said Act, is reproduced as under, -

“15. Duties of Guardian – Every person appointed as a guardian of a person with disability under this Chapter shall, wherever required, either have the care of such persons of disability and his property or be responsible for the maintenance of the person with disability”.

- 8) The petitioner has produced the certificate of appointment vide Ex. D issued u/s 14 of the Said Act. This certificate has been relied upon by this Court in earlier two Petitions and accepted the petitioner as a guardian of the son of the testatrix. On relying on the said Certificate, the petitioner has consented to the petition and thereby waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the deceased.
- 9) Ld. advocate for the petitioner submitted that under the Will, the testatrix has not bequeathed any thing to the said Keyur. However, petitioner is appointed as a guardian of the said Keyur by the testatrix. Hence, soon after the death of the testatrix,

the properties are vested into legatees. Ld. advocate further submitted that as no property is bequeathed to the Keyur, citation could have been issued to the said Keyur, which could have been served upon his Guardian. Ultimately, purpose of Rule 397 of the BHC Rules, would have been complied with. However, in the present petition, the petitioner and her husband, being the guardian of the said Keyur have filed joint affidavit and consented for the petition. Hence, mandate of Rule 397 of the BHC Rules is complied with. Hence, once the guardian gets knowledge of the petition, it is their duty to take steps to protect the interest of the said Keyur, according to law.

- 10)** 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.
- 11)** The petitioner has filed the affidavit of Suyash Bhoir 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.

- 12) Properties mentioned in the schedule-I of the petition are referred in the Will.
- 13) 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.
- 1) 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.

28th April, 2025

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