

**BEFORE : MRS. R. V. RANE
COMPANY REGISTRAR /
TESTAMENTARY REGISTRAR
DATE : 22nd January'2025**

Sr. No. 2-TP/4470/2024 with
WILL/1776/2024
(AMH20210045082C202400005)

Mr. Rahul Jain, Advocate for the petitioner.

Perused Petition. Heard Ld. Advocate for petitioner. In this matter, pursuant to praecipe dated 11.12.2024, Registry placed the matter on 03.01.2025 and to due paucity of time matter was adjourned to 04.01.2025. On 04.01.2025. Registry was directed to verify and submit a report whether there is any caveat is filed in the present petition. The Registry was directed to submit report on or before next adjourned date i.e. on 06.01.2025. On 06.01.2025, matter was not listed and upon request of the Advocate for the petitioner matter was listed on 07.01.2025 as First On Board.

2. On 07.01.2025, Registry has submitted report dated 04.01.2024 in the present petition and said report is taken on record. The said status report is annexed to this order. Upon perusal of the said report, it is observed that in par No. 2 of the said report mentioned that "there is no Cavevat is filed in the above Testamentary Petition No. 4470 of 2024. A print out of the said Case Status is enclosed with the report.

3. It is to be noted that Ld. Advocate for petitioner has mentioned in the praecipe dated 03.01.2015 that as per order dated 12.11.2024, Advocate for Caveator namely Mansi Powar

has served copy of caveat alongwith Vakalatnama by e-mail dated 22.10.2024 and once again on 18.11.2024. It is to be noted that Registry did not receive any caveat or Vakalatnama filed by said Advocate Mansi Powar on behalf of Tehmtan Jamshedji Dumasia and Farrida Percy Daruwala. In view of the above circumstances, Ld. Advocate for petitioner request the matter to be proceeded ahead since Registry has submitted its report as there is no caveat is filed and he has complied with the necessary directions issued by the Registry as per order dated 19.09.2024. Hence, Ld. Advocate for petitioner submits that the present petition can be proceeded ahead as per Rules 399, 401 and 402 of the Bombay High Court (Original Side) Rules, 1980.

Advocate for the petitioner submits that the present petition was listed on 12.11.2024 before the Hon'ble Additional Registrar(O.S)/Addl. Prothonotary and Senior Master for compliance. On 12.11.2024 one Mr. Declan Fernandez i/b Mansi Pawar, Advocate for Caveators was present and they submitted that they E-filed the caveat on 22.10.2024 on behalf of the nephew and niece mentioned at Sr. No. 6 and 7 in the table and undertakes to serve the copy of Caveat with Affidavit in support upon the Ld. Advocate for the Petitioner is recorded. In the said minutes of order it is observed that since the caveat is filed office to check and remove the matter from the board thereafter advocate for the petitioner filed praceipe dated 15.01.2025.

The Master(Adm.) verified the petition today as well on line whether there is any caveat is filed or not and he

reported that there is no such caveat filed in the registry till date.

Advocate for the petitioner requested for permission to carry out correction in the prayer clause with respect to deleting the word “sole” and replace word “Executors” in place of word “Executor” upload the corrected version and get it approved. The said request is accepted. Reverification is dispensed with.

Advocate for the petitioner requested to proceed with the petition since no caveat is filed till date in the Registry. Upon request and verification from Registry I proceeded with the present petition.

1. Perused the Petition. Heard Advocate for petitioner. The present petition is filed for Probate and last will and Testament of deceased viz. Maneck Noshir Cassad who died at Mumbai on 16.05.2024. Copy of death certificate is annexed at Exhibit -A' to the petition. Copy of the identification proof of the deceased is annexed at Exhibit “A1” to the petition.

2. Advocate for the petitioner submits that the said deceased, at the time of her death, was governed by the Indian Succession Act, 1925 and having fixed place of abode B/No. 5, A Block, Pump House, Opp. Manish Park, Andheri (E), Mumbai 400093 and left property 'within Greater Bombay and in the State of Maharashtra.

3. That the deceased has left a writing, which is her last Will and Testament dated 16.01.2018. The original of the said last Will and Testament is marked as Exhibit 'B' and 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. The said Will is in English language and copy of the same is annexed to the petition at Exhibit "B" to the petition.

4. The Petitioner No. 1 is the one of the Surviving Executors named under the Last Will and Testament of the deceased and Petitioner No. 2 is the newly appointed Executor, as per Clause 4 of the Last Will and Testament of the deceased, who are jointly applying for Probate of said Last Will and Testament of deceased abovenamed. The other Executor named in the Will of the deceased, namely:

(1) Anant Ratilal Jani, Advocate and Solicitor and Notary, has died on 12th June 2021. The nominated Executor in Clause 4 of the Last Will and Testament of the deceased i.e Yazdi P. Munsif, has by his letter dated 1st June 2024 shown his inability to act as an Executor and accordingly Faranaaz Karbhari, has accepted to be appointed as an Executor, as per Clause 4 of the Last Will and Testament of the deceased, by acknowledging letter dated 12th June 2024 addressed by Surviving Executor. Hereto annexed and marked Exhibit "C" is an Original letter dated 1st June 2024 and Exhibit "D" is the Original acknowledge letter dated 12th June 2024.

5. Advocate for the petitioner submits that the said Last Will was duly executed by the Deceased at Mumbai in the presence of (1) Ruchit B. Dave (2) Nasreen S. Charania. (3) Mr. Anni K. Poojari. The said Will is unregistered. The said will is annexed as Exhibit "B".

6. Advocate for the petitioner submits that the properties which were left behind by the deceased and which are specified in the Schedule no. I which is annexed to the petition as Exhibit "E" to the petition. The assets of deceased in Schedule I annexed to the petition is of Rs. 1,24,29,409,47/- and the petitioner has paid necessary requisite court fees for the same.

7. Advocate for the petitioner submits that the said will is in English language and will is duly executed and signed by the testatrix/deceased i.e. Maneck Noshir Cassad and two attesting witnesses viz. (1) Ruchit Bhargav Dave, residing at 1-8 Malabar Apartments Nepeansea Road, Opp. Simla House, Mumbai 400006 and (2) Mrs. Nasreen S. Charania at Parekh Mahal, 6th Floor, 80 Veer Nariman Road Churchgate Mumbai 400020 and (3) Mr. Anni K. Poojari at Parekh Mahal, 6th Floor, 80 Veer Nariman Road Churchgate, Mumbai 400020.

Advocate for the petitioner submits that it is mentioned in the Affidavits of Attesting witness that at the time of execution of said will the deceased confirmed

subscribing her signature to the said Will as aforesaid “M.N.C.” and she was of sound and disposing mind, memory and understanding and to the best of my belief made and published the name of his free will and pleasure. Dr (Miss) Mehru Vaghchhipawalla stated in the certificate that deceased is capable and mentally fit and understands the content of the documents on which she has put her signature.

8. Advocate for the petitioner submits that as per requirement of Rule No. 374 of High Court Original Side Rule 1980 and Indian Succession Act, 1925, the affidavits of the attesting witness viz. (1) Ruchit Bhargav Dave, (2) Nasreen Sadruddin Charania is annexed as page no. 41 to 52 to the petition.

9. Advocate for the petitioner submits that the parents of the deceased predeceased the deceased. The husband of the deceased viz. Noshriwan (Noshir) Bejonji Cassad predeceased the deceased on 24.08.1997. The copy of the death certificate is annexed as Exhibit “E”.

Advocate for the petitioner submits that non consenting legal heirs namely Parvez Farham Dhanidaduna, Adi Jamshedji Dumasia, Tehmtan Jamshedj Dumasia, Farrida Percy Daruwala, Perin Hosi Bhuiwala have been served through Bailiff from the office of Sheriff, Mumbai and Affidavit of service dated 15.10.2024 to that effect was filed by Sanjay J. Dhamapurkar, Bailiff from the Office of

the Sheriff of Mumbai. The petitioners affirmed that there are no other legal heirs of the deceased other than mentioned in para no. 8 of the petition.

Advocate for the petitioner submits that the deceased died issueless.

Advocate for the petitioner submits that the deceased had her two sisters and one brother out of which one sister viz. (1) Perin Jehangiriji Dumasia predeceased the deceased as spinster and (2) Mehroo Faram Dhanidaduna, predeceased the deceased (3) Jamshedji Jehangirji Dumasia, brother of the deceased predeceased the deceased.

Advocate for the petitioner submits that the deceased left behind her legal heirs viz. (1) Adi Jamshedji Dumasia (nephew of the deceased/son of deceased brother), (2) Homai Yazdi Munsif (niece of the deceased/daughter of deceased brother), (3) Ava Pesotan Irani (niece of the deceased/daughter of deceased brother), (4) Amy Cyrus Rustom (niece of the deceased/daughter of the deceased brother), (5) Dinaz Paresh Parikh (niece of the deceased/daughter of the deceased brother) (6) Tehmtan Jamshedji Dumasia (nephew of the deceased/son of the deceased brother), (7) Farrida Percy Daruwala (niece of the deceased/daughter of deceased sister), (8) Parvez Farham Dhanidaduna (nephew of the deceased/son of deceased sister), (9) Perin Hosi Bhuriwala (niece of the deceased/daughter of deceased sister).

Advocate for the petitioner submits that the consent affidavits of Homai Yazdi Munsif and Amy Cyrus Rustom are annexed as page no. 53 to 56 , and the consent affidavits of Ava Pesotan Irani and Dinaz Paresh Parikh dated 07.01.2025 are annexed separately to the petition. The consent affidavits of Ava Pesotan Irani and Dinaz Paresh Parikh dated 07.01.2025 are annexed separately to the petition.

Advocate for the petitioner submits that Homai Yazdi Munsif and Amy Cyrus Rustom, Ava Pesotan Irani and Dinaz Paresh Parikh had given their consent for issuance of probate in favour of (1) Shilpa Balmukund Thakar and (2) Faranaaz Gaiv Karbhari, petitioners.

10. In the present petition General citation was issued on **19.09.2024** in the aforesaid matter. Advocate for the petitioner submits that Affidavit of Service dated **03.10.2024** for proving General citation is filed in the registry. It is observed that non consenting legal heirs namely Parvez Farham Dhanidaduna, Adi Jamshedji Dumasia, Tehmtan Jamshedji Dumasia, Farrida Percy Daruwala, Perin Hosi Bhuiwala have been served through Bailiff from the office of Sheriff, Mumbai and Affidavit of service dated 15.10.2024 to that effect was filed by Sanjay J. Dhamapurkar, Bailiff from the Office of the Sheriff of Mumbai. The petitioners affirmed that there are no other legal heirs of the deceased other than mentioned in para no. 8 of the petition. Notice to Collector is issued.

After perusal of the petition, will and submission made by the Advocate for the petitioner and since no caveat is been filed in the registry till date, the petition deserves to be allowed, as prayed for. Hence, following order :

ORDER

- 1) Petition is allowed and A Probate may be granted to the Petitioners being the surviving Executors named under the said Last Will and Testament of the deceased and appointed Executors under the said Last Will and Testament of the deceased, having effect within Greater Bombay and in the State of Maharashtra.
- 2) Before issuance of the probate, the office to verify whether any cross Petition is pending or Affidavit resisting the petition is filed.

Office to issue grant as soon as Advocate for the petitioner carry out correction into the prayer clause of the petition.

**COMPANY REGISTRAR /
TESTAMENTARY REGISTRAR**