

**BEFORE : MRS. R.V. RANE
COMPANY REGISTRAR /
TESTAMENTARY REGISTRAR
DATE : 2nd January 2025**

Sr. No. – 12-TP/5154/2024 with WILL/2064/2024
(ECHCBM02107972024)

Ms. Archita Gharat a/w. Ms. Aiswaryajeeta Tawde i/b Kanga
& Co., Advocate for the petitioner.

For Hearing :

Advocate for the petitioner submits that the attesting witnesses to the will and witnesses who were present in the office of the Registrar were need not to be the same since the registration of the will is not mandatory as per Indian Succession Act'1925 and one of the attesting witness to the will has already filed an affidavit as per the provision of Indian Succession Act'1925 as well as Bombay High Court Rule 374. Advocate for the petitioner further submits that the attesting witness to the will is attesting to the contents of the will and he was present with testator at the time of writing of the said will and the testator signed the will in his presence. While the witness who are before the Registrar merely identifying the testator who is present for registering the document, and not contents of the will or signature on the will. Hence, She submits that since the registration of the will itself is not mandatory under Section 18 of the Registration Act 1908. The same can be considered.

The submissions made by the Advocate are accepted and I proceeded with the petition.

1. Perused the Petition. Heard Advocate for petitioner. The present petition is filed for Probate and last will and Testament of deceased viz. Shantikumar Dharamshi Majithia who died at Mumbai on 11.02.2021. 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 his death, was governed by the Hindu Succession Act, 1956 and having fixed place of abode at at Shanti Kutir, 5th and 6th Floor, 68, S.V. Road, Opp. Andheri Fire Station, Andheri (W), Mumbai 400058, and left property in Greater Bombay and in the state of Maharashtra.

3. That the deceased has left a writing, which is his last Will and Testament dated 20.10.2008 alongwith a Codicil dated 02.06.2015 and Addendum to the Codicil dated 01.01.2019. The original will of the said last Will and Testament is marked as Exhibit 'B' 'C' and 'D' is annexed to the petition.

Advocate for the petitioner submits that the Last Will and Testament along with the Codicil and Addendum to the Codicil were duly executed on 20th October 2008, 2nd June

2015 and 1st January 2019 respectively. The Deceased had previously made and published 4 Codicils viz. First Codicil dated 16th June 2010, Second Codicil dated 2nd November'2010, Third Codicil dated 20th June 2013 and Fourth Codicil dated 19th June 2014. These Codicils were however revoked by Deceased vide his Codicil dated 2nd June 2015 which is marked as Exhibit 'C'.

4. Advocate for the petitioner submits that the said Last Will dated 20.10.2008 was duly executed by the Deceased at Mumbai and appointed the Executors viz. (a) Mr. Jayanti Arjun Patel, (b) Mr. Sunil Shantikumar Majithia, (c) Mr. Tahir alias Kevin Shantikumar Majithia. The said Will was registered with Sub-Registrar of Assurance, Bandra, Mumbai on 06.11.2008. The said will is annexed as Exhibit "B" to the petition.

Advocate for the petitioner submits that the witnesses present were namely (1) B. C. Raghani (2) D. B. Raghani in the said Will dated 20.10.2008.

Advocate for the petitioner submits that witnesses to registration of will before the Registrar viz (1) Ashok Pandya residing at Rajaram Wadi, near Golden City Club, Vile Parle (West) and (2) Shyamchandra Vasudeo Lad residing at Flat No. D/402, Rajani Apartment, Central Park, Nalasopara East were present before the Sub-Registrar of Assurance, Bandra, Mumbai on 06.11.2008 who identified the deceased before the Registrar.

Advocate for the petitioner submits that the said will is in English language and will is duly executed and signed by the testator/deceased i.e. Shantikumar Dharamshi Majithia and the attesting witnesses are viz. (1) Daksha B. Raghani residing at 406 “C” Wing, Dharam Palace, N. S. Patkar Marg, Mumbai – 400007 and (2) B. C. Ranglani residing at Examiner Press Building, 35, Dalal Street, Fort, Mumbai – 400023. Daksha B. Raghani one of the attesting witness filed affidavit of attesting witness. It is to be noted that Mr. Shantikumar Dharamshi Majithia, was of sound and disposing mind, memory and understanding and to the best of my belief made and published the signature of his free will and pleasure.

5. Advocate for the petitioner submits that the codicil dated 2.6.2015 is registered with the Sub-Registrar of Assurances at Bandra on 08.06.2015 under serial no. BDR-1/5150 of 2015. The said is annexed as Exhibit “C”.

Advocate for the petitioner submits that the witnesses are namely (1) B. C. Raghani (2) D. B. Raghani in the said Codicil dated 02.06.2015.

Advocate for the petitioner submits that by the said codicil dated 02.06.2015 deceased appointed the Executors viz. a) Mr. Jayanti Arjun Patel, (b) Mr. Sunil Shantikumar Majithia, (c) Mr. Sudhir Shantikumar Kanjithia (d) Vasant Anandji Patel and (e) Zahera Shantikumar Majithia.

The executors have filed Probate in their capacity as the Executors of the said Last Will.

Advocate for the petitioner submits that witnesses to registration of codicil dated 02.06.2015 before the Registrar was (1) Shyamchandra Lad residing at Rajani Apartment, B-402 Nallasopara East, Pin Code – 209401. (2) Shantaram Chandivade residing at C.D. Patil Chawl, 1/9 Santoshi Mata Road, Dahisar West-Pin Code-400068.

Advocate for the petitioner submits that the said codicil dated 02.06.2015 is in English language and is duly executed and signed by the testator/deceased i.e. Shantikumar Dharamshi Majithia and attesting witnesses were viz. (1) Daksha. B. Raghani residing at 406 “C” Wing, Dharam Palace, N. S. Patkar Marg, Mumbai – 400007 and (2) Bharat C. Raghani residing at Examiner Press Building, 35, Dalal Street, Fort, Mumbai – 400023. Daksha B. Raghani one of the attesting witness filed affidavit of attesting witness. Daksha B. Raghani one of the attesting witness filed affidavit of attesting witness. It is to be noted that Mr. Shantikumar Dharamshi Majithia, was of sound and disposing mind, memory and understanding and to the best of my belief made and published the signature of his free will and pleasure. Dr. Jitendra Trivedi stated in his certificate dated 02.06.2015 that Mr. Shantikumar Dharamshi Majithia is very much in sound mind with full knowledge. He is fit for signing his Will.

6. Advocate for the petitioner submits that the Addendum dated 01.01.2019 to the codicil dated 02.06.2015 is registered with the Sub-Registrar of Assurances at Bandra on 04.01.2019 under serial no. BDR-1/5150 read with this Addendum is valid and subsisting and will and testament dated 20.10.2008 and the Codicil dated 2.6.2015 shall always be read alongwith Addendum. The same is annexed as Exhibit "D".

Advocate for the petitioner submits that the witnesses are namely (1) B. R. Zaveri residing and (2) Shyamchandra V. Lad. in the said Addendum dated 01.01.2019 to 5th Codicil dated 2.6.2015.

Advocate for the petitioner submits that witnesses to registration of Addendum dated 01.01.2019 before the Registrar was (1) Shyamchandra Lad residing at D-402 Ranjan Apartment, Nallasopara East , Pin Code – 401209. (2) Shantaram Chandivade residing at Room No. 9 C.D. Patil Chawl, Dahisar West, Mumbai -400098.

Advocate for the petitioner submits that the said Addendum is in English language and the Addendum is duly executed and signed by the testator/deceased i.e. Shantikumar Dharamshi Majithia and attesting witnesses (1) B. R. Zaveri who is residing at 103, Bhagyodaya, Shree Nagar Colony, M. G. Road, Goregaon West, Mumbai - 400062 and (2) Shyamchandra V. Lad who is residing is

residing at D/402, Rajni Apartment, Central Park, Nallasopara (East), Thane. Shyamchandra V. Lad one of the attesting witness filed affidavit of attesting witness. It is to noted that Mr. Shantikumar Dharamshi Majithia, was of sound and disposing mind, memory and understanding and to the best of my belief made and published the signature of his free will and pleasure. Dr. Jitendra Trivedi stated in his certificate dated 01.01.2019 that Mr. Shantikumar Dharamshi Majithia was very much in sound side of mind and fully having a knowledge of content of will. He has signed his will without any pressure. He is fit for signing his Will.

7. 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 "D" to the petition and all the items which are permissible by law and Schedule II to be deducted for the purpose of ascertaining the net estate of the deceased. The assets left behind by the deceased specified in Schedule I annexed to the petition is of Rs. 2,40,84,86,298.31/- and the petitioner has paid necessary requisite court fees for the same.

8. Advocate for the petitioner submits that the parents of the deceased predeceased the deceased.

9. Advocate for the petitioner submits that the deceased in or about the year 1982 embraced Islam and changed his

name from Shantikumar Dharamshi Majithia to Shaheed Hussain. The Deceased married Ms. Zahera Begum according to Muslim rites and Nikah ceremony on 21st February 1982, which was recorded in the Register of Mah Kama-E-Shari, Jama Masjid, Bandra, Mumbai.

10. Advocate for the petitioner submits that deceased on 6th May 1994 converted back to Hinduism and changed his name from Shaheed Hussain back to Shantikumar Dharamshi Majithia by the consent of his wife Ms. Zahera Shantikumar Majithia. Copy of the consent letter of Ms. Zahera Shantikumar Majithia is annexed as Exhibit “G”.

11. Advocate for the petitioner submits that the deceased left behind him his legal heirs viz. Widow, sons and daughter viz. (1) Shobhana S. Majithia, (widow of the deceased) (2) Sudhir S. Majithia (son of the deceased), (3) Sunil Shantikumar Majithia (son of the deceased), (4) Madhuri A. Amin (daughter of the deceased), (5) Pankaj Majithia (son of the deceased) predeceased the deceased leaving behind (5a) Nirupama P. Majithia (widow of predeceased son Pankaj Majithia), (5b) Pearl Majithia, (daughter of predeceased son Pankaj Majithia) (5c) Parth Majithia, (son of predeceased son Pankaj Majithia) , (6) Zahera Shantikumar Majithia, (second wife of the deceased/petitioner), (7) Tahir alias Kevin Shantikumar Majithia (son of the deceased out of second marriage) (8)

Mehvish alias Neha Shantikumar Majithia (daughter of the deceased out of second marriage)

Advocate for the petitioner submits that Shobhana S. Majithia, Sudhir S. Majithia , Sunil Shantikumar Majithia, Madhuri A. Amin, Nirupama P. Majithia , Pearl Majithia, Parth Majithia, Tahir alias Kevin Shantikumar Majithia and Mehvish alias Neha Shantikumar Majithia had given their consent for issuance of Proboate in favour of the petitioner. The Consent Affidavits are annexed to page no. 158 to 192.

12. Advocate for the petitioner submits that there is delay of filing this petition be condoned as the concerned authorities asked for legal representation to transfer the property in favour of the Legal heirs. In view thereof, delay is condoned.

13. In the present petition the General citation was issued on **13.11.2024** in the aforesaid matter. Advocate for the petitioner submits that Affidavit of Service dated **04.12.2024** for proving General citation. Notice to Collector is issued. After perusal of the petition, will and submission made by the Advocate for the petitioner, the petition deserves to be allowed, as prayed for. Hence, following order :

ORDER

- 1) Petition is allowed and the probate be granted to the petitioner herein having effect throughout 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.

**COMPANY REGISTRAR /
TESTAMENTARY REGISTRAR**