

**BEFORE : MRS. R. V. RANE ,
COMPANY REGISTRAR /
TESTAMENTARY REGISTRAR
Date: 04th JANUARY, 2025**

CALLED FOR COMPLIANCE :

86 TP/5248/2024
(AMH20230019553C202400044)
WITH
WILL/2094/2024

Mr. Huzefa S. Khokhawala i/b. Nankani Ishwar Jagdish, Advocate for petitioner

PC Pursuant to the order dated 20.12.2024 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 as the witness who are before the Registrar merely identifying the testator who is present for registering the document and no 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 Registration Act, 1908, the same can be considered.

After perusal of the petition and hearing submission of Advocate for petitioner and as per provision of law I am proceeding with the present petition ahead.

1. Perused Petition. Heard Ld. Advocate for petitioner. This petition is for Probate of last Will and Testament of deceased namely Suresh Vishindas (Vishnudas) Goklani alias Suresh Vishindas Goklani. The said deceased died at Pune on 04.06.2015. Copy of death certificate of deceased is annexed to the petition at Exhibit "A". Copy of Identification proof of deceased viz. copy Aadhaar Card is annexed to the petition at Exhibit- "B".

2. Ld. Advocate for petitioner submits that deceased left behind his last Will and Testament which was duly executed at Pune on 07.10.2009 and Registered on 07.11.2009 in the Office of the Joint Sub-Registrar, Haveli- VII, Pune, on 7th November, 2009 bearing Registration No.6393/2009. The said Will is in English language and copy of the same is annexed to the petition at Exhibit – "C" and original is handed in separately for being filed and kept in safe place in the office of the Prothonotary and Senior Master of this Hon'ble Court.

3. Ld. Advocate for petitioner submits that deceased had named 4 persons as Executors in the said Will namely (1) Dharamdas Goklani, (2) Shyam Talreja, (3) Girish Goklani (Petitioner No.1 herein) and (4) Vanita Talreja (Petitioner No.2 herein). He further submits that Dharamdas Goklani expired on 2nd January, 2018 and Shyam Talreja expired 14th March, 2013. The Petitioners in the capacity of Executors are applying for Probate of the said Will, being last Will and Testament of the deceased. Hereto annexed and marked as Exhibits "D" and "E" are copies of the death certificates of Dharamdas Goklani issued on 15th January 2018 and the death certificate of Shyam Talreja issued on 26th March 2013, respectively by the Municipal Corporation of Greater Mumbai.

4. Ld. Advocate for petitioner submits that deceased left behind his legal

heirs shown in the paragraph Nos. 9 to 13 of the petition, as per the provisions of the Hindu Succession Act, 1956. Parents of deceased namely Vishindas Bulchand Goklani and Haribai Vishindas Goklani predeceased the deceased. Deceased was married to one Kashmira Suresh Goklani, who predeceased the Deceased on 15th September 1998. There are no issues born out of the marriage/wedlock of the Deceased with Kashmira Suresh Goklani. Thereafter, the Deceased married Asha Suresh Goklani, who predeceased the Deceased on 15th September 2009. There are no issues born out of the marriage / wedlock of the Deceased with Asha Suresh Goklani.

Apart from the heirs mentioned at Paragraph No.8 of the petition, deceased had 5 brothers, namely: (1) Kishinchand Goklani, who predeceased the deceased, died on 5th June 1999, (2) Naraindas Vishindas Goklani, who predeceased the deceased on 17th June 1996, (3) Jamnadas Vishindas Goklani, who predeceased the deceased in the year 2000, (4) Kanhaiyalal Vishindas Goklani, who predeceased the deceased on 21st September 1983 and (5) Dharamdas Vishindas Goklani, who expired on 2nd January 2018 and 2 sisters namely (6) Pushpa Vishindas Goklani, who expired on 27th July 2022; and (7) Rukmani Vishindas Goklani, who expired on 13th December 2021 respectively. Since, there are no heirs falling under Section 8(a) of the Hindu Succession Act, 1956, Section 8(b) will come into effect, viz, upon the heirs of the specified in Class II of the Schedule. Since the father of deceased is not alive, one will have to look into the relatives mentioned in Entry II of Class II amongst which one brother of deceased i.e. Bhagwandas Vishindas Goklani and one sister of deceased i.e. Vanita Shyam Talreja have survived the deceased. Consent Affidavit of Bhagwandas Vishindas Goklani dated 23.02.2024 is annexed at page Nos. 37 to 41 to the petition.

5. Ld. Advocate for petitioner submits that once there is an heirs mentioned in Entry II of Class II, as per Section 9 of Hindu Succession Act, 1956, one does not have to look at subsequent entries in Class II. Thus, the only heirs of deceased entitled to service of citation are the ones mentioned at Paragraph No.8 of the petition falling under Entry II (2) and (3) of Class II of the Schedule. The petitioner affirmed that there are no other legal heirs of the deceased other than mentioned in para No. 8 of the petition.

6. Ld. Advocate for petitioner further submits that as regards the properties mentioned in the Will and not shown in the schedule, description thereof is given in paras 6 and 7 of the petition. Deceased left behind him the properties mentioned in Schedule I annexed to the petition after deducting the debts and liabilities shown in Schedule II annexed to the petition, are mentioned in para No. 8 of the petition and petitioner has paid the court fees accordingly.

7. Petitioner's oath is filed. Deceased left behind Will which is annexed to the petition at Exhibit – “C” is duly executed and witnessed by two attesting Witnesses namely Bala Boke and Rambhau Pol and as per the provisions of Rule 374 of the Bombay High Court (Original Side) Rules, 1980, Affidavit of Bala Boke dated 26.08.2024 one of the Attesting Witnesses to the Will is filed and the same is on record. It is to be noted that Dr. Yogesh M. Gaikwad attached to Shree Laxmi Hospital issued Medical certificate dated 07.11.2009 wherein he stated that “He is physically and mentally fit”.

8. It is to be noted that deceased has specifically mentioned in the Will that “I am senior citizen enjoying good health and I possess a sound mind, and I

am able to comprehend and execute this will effectively. This will is made by me of my own independent decision and free volition. I have not be influenced, cajoled or coerced by any person whomsoever, and in any manner whatsoever.”

9. In the present petition, General Citation was issued on 14.11.2024 and Affidavit of Service of General Citation to that effect is filed on 28.11.2024. Notice to Collector is issued. All other legal formalities are complied with.

10. After perusal of the petition, Will and submission made by Advocate for petitioner, the petition deserves to be allowed, as prayed for. Hence, following order :

ORDER

- 1) Petition is allowed and probate be granted to the Petitioner herein having effect throughout India.
- 2) Before issuance of above said Probate, office to verify that there is no cross Petition is pending or caveat is filed. Office to act accordingly.

04.01.2025

**COMPANY REGISTRAR /
TESTAMENTARY REGISTRAR**