

Before: Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date: 08th April, 2025

FOR COMPLIANCE:

81. TP/5547/2024
(AMH20240130121C
202400004)

with
WILL/2199/2024

P. C. : Shri. Manoj Mane i/b Nisarg Mehta Ld. Advocate
for the Petitioner

1) This petition is filed by petitioner, being one of the beneficiaries under the Will executed by Suresh Dalpatlal Shah alias Sureshchandra Dalpatlal Shah (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 Mumbai on 27-10-2023. Petitioner, namely Dhaval Suresh Shah, 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) No executor has been appointed under the Will. The petitioner is the one of the beneficiary under the Will. Hence, petition is tenable.

4) Ld. advocate for the petitioner has relied upon decision of the Hon'ble Delhi High Court in case of **ANAND BURMAN VERSUS STATE [ILR (2012) 6 DELHI 152]**. It is submitted that Sec. 67 of the Indian Succession Act, 1925 is not applicable to the Will, executed by the Hindu.

5) Petitioner stated that the deceased left behind his last Will and Testament which was duly executed at Mumbai on 01-04-2012, 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 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.

7) 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.

8) The petitioner has filed the affidavit being 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. In view of the above referred decision of the Hon'ble Delhi High Court, the testator is Hindu and therefore provisions of Sec. 67 of the IS Act would not apply. It is also laid down in para no. 7 of the said Judgment that, As regards to the competence of the petitioner (in the said petition,

who was legatees as well as attesting witness), as an attesting witness, Section 68 of the Indian Succession Act, 1925 provides that no person, by reasons of interest in or of this being executor of, a Will shall be disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof. Therefore, Shri. Ashok Chand Burman was a competent witness to prove execution of the Will executed by late Smt. Sudha Burman. Circumstances and facts of the cited case are similar to the petition in hand. Hence, benefit is given, as Section 65 of the Indian Succession Act, 1925 does not apply to Will executed by the Hindu as per Part VI, III of Indian Succession Act, 1925. Furthermore, affidavit has to be considered in order to prove the Will. Hence, petition is also maintainable.

9) Properties mentioned in the schedule-I of the petition are referred in the Will.

10) Other legatees, namely Mihir Shah, Promit Shah, have given consents to grant Letters of Administration to petitioner.

11) 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 India.

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.

08th April, 2025

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