

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
S.M.A. No. 253 of 2019

Date	Order with signature of Judge
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For hearing of main petition.

05.09.2019

Petitioners are present in person.

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**1.** Petitioners Mrs. Meher Rustom Kabraji wife of Rustom Kabraji, Miss. Ava Ardeshir Cowasjee d/o Ardeshir Cowasjee, Raymond Jal H. P. Byramji s/o. Jal Byramji and Mohammad Abdur Rahman s/o. Mohammad Naim-ur-Rahman have filed this petition under Section 276 of the Succession Act, 1925 for the grant of Probate of the Will dated 16.06.2015 and Codicils dated 17.11.2016, 27.02.2018 and 28.02.2019 in their names in respect of moveable properties including securities and shares as well as immovable properties left/ owned by Mrs. Manic Cowasjee ("**Deceased**") wife of late Cowasjee Minocher Cowasjee, which are described in Schedule of Properties attached to the petition at Page Nos. 47 to 51.

**2.** It is stated in the petition that the said deceased died on 30.01.2019 at Karachi, who was a member of Zoroastrian (Parsi) faith and the deceased in her life time had executed a **Will** on 16.06.2015 in presence of M/s. Dhunjishaw Ferozpurwalla and Nader Cowasjee (copy thereof is available at page No. 15 to 23 of the memo of petition), whereby the deceased appointed Cowasjee Minocher Cowasjee s/o. Minocher Cowasjee (her husband) and above named four petitioners as executors. It is specifically mentioned in the Will that if her husband has passed away at the time of her demise then prior to giving effect to any portion of this

Will, the deceased directed the Trustees to pay off all her legal debts, meet funeral expenses and make provisions for prayers expenses for the duration of one year from the time of her death and the trustees shall hold her share in the property known as Karachi Chambers located on Hasrat Mohani Road, Karachi that is jointly owned by her with her sister Ms. Meher Rustom Kabraji in trust for the benefit of her said sister during her life time and after the demise of her sister, her Trustees shall ensure that all her share, rights, title and interests in the aforesaid immovable shall be transferred into equal undivided shares in the name of her nieces, namely, (i) Mrs. Bharucha Nina Gaymard, (ii) Mrs. Mahajan Vera Anand and (iii) Mrs. Narang Khurishid Malu, while all the monies lying in the bank account No. 100015670 held with JS Bank Limited in her name shall be distributed equally between her nieces named above. It is also mentioned in the Will that in the event the deceased dies before her husband, he may if he so desires continue to reside in the house till his demise and that on the date of her demise she would hold one immovable property i.e. Plot No. F-3, Karachi Development Authority Scheme 5, Block 7, Karachi in her own name so also share certificates and bank accounts in her sole and absolute name and subject to Clause 4 of the Will, each of these properties both movable and immovable are to be sold by her trustees within a reasonable period of time so as to obtain the best value for the same and the monies available from such sale should be distributed in the following manner:-

(i) A sum of Rs.500,000 should be divided amongst all her servants who were employed by her at the time of her demise.

(iii) The remaining amounts that are obtained from the sale of the immovable property bearing Plot No. F-3, Karachi Development Authority Scheme 5, Block 7, Karachi of her

share and from her bank account should be distributed equally as between her above names three nieces.

**3.** Since the husband of the deceased expired in her lifetime on 16.03.2016 and she discovered that he had bequeathed to her a portion of his estate which she had not taken into account at the time of execution of her Will; the deceased executed **First Codicil** on 17.11.2016 in presence of M/s. Dhunjishaw Ferozpurwalla and Muhammad Anwar (copy thereof is available at page No. 25 to 31 of the memo of petition) by modifying that now the petitioners are her Trustees, who were directed to pay off all her legal debts, meet funeral expenses and make provisions for prayers expenses for the duration of one year from the time of her death. Besides, a new Clause "5A" was inserted in the Will to the effect that the entire share of deceased's estate that she have received from her late husband should be divided so that 25% of the amount that had been bequeathed to her will be settled by her Trustees in the Mani Cowasjee Trust that was constituted by her late husband and the balance 75% should be distributed by the Trustees as between the nephews and nieces of her late husbands, namely, (i) Minocher Cowasjee, (ii) Nereus Cowasjee, (iii) Dhunmai Kanga, (iv) Aban Archer, (v) Zenoibia Biggs, (vi) Zerine Kharas, (vii) Ronnie Kharas, (viii) Bharucha Nina Gaymard, (ix) Mrs. Nahajan Vera Anand and (x) Mrs. Narang Khurishid Malu. Thereafter, the deceased executed **Re: Codicil** on 27.02.2018 in presence of M/s. Dhunjishaw Ferozpurwalla and Muhammad Anwar (copy thereof is available at page No. 33 of the memo of petition) to the effect that in addition to her Will and Codicil a sum of Rs.300,000- be given to each of her household staff and Rs.500,000/- be given to each member of her nursing staff and Mrs. Dolly Trombewall who was her hairdresser. Deceased executed **Second Codicil** on 28.02.2018 in presence of

M/s. Dhunjishaw Ferozpurwalla and Muhammad Anwar (copy thereof is available at page No. 35 to 37 of the memo of petition),

whereby she made following amendments to the Will:-

1.1. Clause 3.1. shall be substituted as follows:-

*“My Trustees shall hold my share of the property (and all income derived therefrom) known as “Karachi Chambers” located on Hasrat Mohani Raod, Karachi (the “Property”), that is jointly owned by me with my sister Mrs. Meher Rustom Kabraji wife of late Rustom D. Kabraji (hereinafter in My Will, “My Sister”) for My Sister and distribute my share of the income from the property to My Sister during her lifetime;*

*PROVIDED THAT, my Trustees are directed that upon request received from my Sister at any time they shall join her in selling the Property and my share of the net proceeds thereof shall be given absolutely to my Sister.*

*After the demise of my Sister and if the Property has not been sold pursuant to the foregoing Provisio, my Trustees shall, acting under the instructions of my Sister’s executors whose decision as towards the sale shall not be called into question as and when required, sell the Property and ensure that my share of the proceeds are distributed in three equal shares to my nieces (the daughters of my late brother Noshir) as follows:*

- (i) Mrs. Bharucha, Nina Gaymard*
  - (ii) Mrs. Mahajan, Vera Anand*
  - (iii) Mrs. Narang, Khurshid Malu*
- (hereinafter in this my Will referred to as “My Nieces”)*

1.2. Clause 3.2 of my Will shall be amended and take effect as follows:

*“All monies that are lying in the bank account No. 100015670 held with JS Bank Limited shall be distributed equally between my Nieces and my Sister”.*

1.3. Clause 5.2(ii) of my Will shall be amended and take effect as follows:

*The words “...be distributed equally between my following nieces:*

- (i) Mrs. Bharucha, Nina Gaymard*
- (ii) Mrs. Mahajan, Vera Anand*
- (iii) Mrs. Narang, Khurishid Malu*

*shall be substituted with the following:*

*“be distributed equally between my Nieces and my Sister”.*

2. *During lifetime, My Sister shall be absolutely entitled in all respects to the use and benefit of the legacies and property received by her under my Will as hereby further amended. However, I desire and express my wish to My Sister, that the residue of all such legacies and property received by her from me under my Will be passed, upon her demise, under her Will to My Nieces (also her nieces).*

3. *Save as hereby varied and amended, in all other respects I confirm my Will and my Will as varied by this Second Codicil shall be read, construed and take effect as one integral document.*

4. Affidavits of witnesses of Will and Codicils, namely, M/s. Dhunjishaw Ferozpurwalla s/o. Feroz Sobraji, Nader Cowasjee s/o. Cyrus R. Cowasjee and Muhammad Anwar s/o. Muhammad Hussain have been filed with this petition.

5. Notice of this petition was published in Daily “Jang” Karachi dated 28.06.2019; however, none has filed any objection to the grant of this petition, as per the reports submitted by the Deputy Registrar (OS) on 22.08.2019.

6. Today all the four petitioners and three witnesses of the Will and Codicils are present. They affirm the contents of memo of petition as well as Will and Codicils and their affidavits and also verify their respective signatures thereon.

7. Since all other legal formalities/ requirements have been fulfilled, there is no impediment in grant of probate to the petitioners as the executors of the Will and Codicils, therefore, the

petition is allowed. The office is directed to issue probate in respect of movable properties including securities and shares as well as immovable properties as per details disclosed in the Schedule of Properties attached to the petition, as per rules.

J U D G E

Athar Zai