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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 6 OF 2010
IN
TESTAMENTARY PETITION NO. 163 OF 2009**

Laxmi Bindeshwari Yadav	...Plaintiff
<i>Versus</i>	
Shantilal Ranchhod Tank	...Defendant

Ms. S. Patil, *for the Plaintiff.*
Ms. P. Nadar, *for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 6th October 2015

PC:-

1. This Suit is one of a pair with Testamentary Petition No. 337 of 2010. That Petition is filed by the present Defendant (“**Shashank**”) and, since it propounds a later Will, would ordinarily have to be heard before the present suit. However, it seems that Shashank’s Petition has been dismissed for default and for non-compliance of office objections, not once, but repeatedly. It is still not restored after the last dismissal. As a result, the Plaintiff in the present suit (“**Laxmi**”) is unable to contest Shashank’s petition.

2. Testamentary Petition No. 337 of 2010 is on board today at Serial No. 32. I have separately taken up that Petition and found that it cannot be restored.

3. The solitary ground taken in the Affidavit in Support of the Caveat in the present suit is pendency of Testamentary Petition No. 337 of 2010. There is no other valid ground on which an issue can be drawn in the present Petition.

4. Now that it has been found that Testamentary Petition No. 337 of 2010 was dismissed for default on 6th March 2015; has not been restored since; and there is no formal application for restoration of the Petition, then there is no surviving ground or challenge to the Will propounded in the present suit. In particular, in the Affidavit in Support of the Caveat in this suit, there is no challenge in the Caveat to the execution of the Will propounded in the present Suit. Since Testamentary Petition No. 337 of 2010 has been dismissed for default, nothing survives in the Caveat and it is, therefore, discharged.

5. There is, therefore, no contest to Testamentary Suit No. 6 of 2010. Consequently, Testamentary Petition No. 163 of 2009 is to proceed expeditiously as an uncontested Petition for probate.

6. It is, however, clarified that this is without prejudice to the Defendant's/Caveator's rights and contentions in regard to his title to the immovable property in question. The Defendant will be at liberty to adopt such civil proceedings as he thinks necessary to

establish his title to the room or part of the room to which he claims to be entitled.

(G. S. PATEL, J.)

CERTIFICATE

“Certified to be a true and correct copy of the original signed Judgment/Order.”