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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 12 OF 2015
IN
TESTAMENTARY SUIT NO. 56 OF 2012
IN
TESTAMENTARY PETITION NO. 57 OF 2010

Darius Kaikhushroo Soonawala	...Plaintiff
<i>Versus</i>	
Fredy Peshotan Khambata	...Defendant

Mr. Darius K. Soonawala, Plaintiff in person.
Ms. Nikita Gada, i/b M/s. Niranjana Lapashiya & Co., for the
Defendant.

CORAM: G.S. PATEL, J
DATED: 5th August 2015

PC:-

1. This is the Plaintiff's Notice of Motion for discharging the Caveat. The Notice of Motion also seeks to set aside an Administrative Order dated 5th July 2012 passed by Shri Matkar, Registrar, High Court at Bombay. A further prayer is made seeking action be taken in perjury and contempt both against the Caveator and his Advocate. Finally prayer (f) is for an order against the

Caveator to deposit in this Court all the shares mentioned in the schedule to the probate Petition.

2. As regards prayer (f), I have already today separately noted a statement made by the learned Advocate, on instructions from the Caveator to the effect that her client's attempts to get the shares of two companies have not been accepted and that her client has no knowledge of the shares of the other companies. She also states that none of these shares are in the Defendant's physical custody and possession. At this, the Plaintiff confirms that the original shares (but not the bonus or splits) listed in Schedule I to the Petition are in his possession. Consequently, having regard to the statement made by the Defendant and accepted today, and the foregoing acknowledgement by the Plaintiff, no further order is necessary in terms of prayer clause (f).

3. As regards the prayer for discharge of the Caveat, it is seen that an Affidavit in Support of the Caveat is already on record. That Affidavit contains specific grounds are made challenging the Will. Whether or not there is substance to these grounds will have to be decided after evidence is taken. It is not possible to dismiss the caveat *in limine* at this stage on this Notice of Motion. The grounds urged for setting aside *ex-facie* demand an examination of the correctness of the contentions in the Affidavit in Support of the Caveat. It cannot be determined in a summary fashion whether those contentions are, as the Plaintiff alleges, false or incorrect. Prayer clause (a) is, therefore, rejected.

4. Consequently, the prayer seeking to set aside the Administrative Order dated 5th July 2012 also does not survive. That merely notes that there is a caveat and an Affidavit in Support already filed. The Plaintiff's contention that the caveat and Affidavit in Support were filed well beyond time is not one that I can examine today. The Plaintiff ought to have opposed any application for condonation of delay. Once the caveat is entered and an Affidavit in Support is filed, I do not think it is possible to dismiss the caveat on the ground that it was beyond time; if it was, it ought never to have been taken on file in the first place.

5. As regards the prayer seeking prosecution for perjury and contempt, these are not reliefs that can be granted at this stage. They too demand an examination after evidence as to whether or not the statements in the Caveat are correct.

6. The Notice of Motion No. 12 of 2015 is disposed of in these terms. The Plaintiff applies for a stay. There is nothing in this order than can be stayed. The application is refused. Separate directions are issued for listing the suit for framing issues.

(G. S. PATEL, J.)