

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO.113 OF 2015
IN
TESTAMENTARY PETITION NO.616 OF 2012**

Rajesh Bhagwanji Shah ...Caveator

IN THE MATTER BETWEEN:

Mr. Kishore Bhagwanji Shah ...Petitioner

V/s.

Rajesh Bhagwanji Shah ...Respondent

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Mr. Anil Chauhan i/by Mr. R.M.Shah, advocates for the Petitioner.
Mr. Amogh K. Karandikar, advocate for the Respondent.

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CORAM : A. K. MENON, J.

DATE : 19TH NOVEMBER, 2015.

P.C.:

This notice of motion is taken out for setting aside the order dated 5.3.2015 passed by the Prothonotary & Senior Master, High Court, Bombay rejecting the caveat in Testamentary Petition No.616 of 2012 under Rule 986 of the High Court Original Side Rules and to restore the caveat and affidavit. This motion has been opposed by the petitioner by filing affidavit dated 16.11.2015.

2 Having heard learned counsel and having perused the affidavits, I am satisfied that with the explanations provided in the affidavit-in-support. There is delay of 139 days in taking out the present

notice of motion. Having perused the affidavit-in support of the caveator and considering the facts of the case, I find that this is a fit case to condone the delay and accordingly, notice of motion is made absolute in terms of prayer clauses (a) and (b) subject to payment of cost of Rs.3,000/- to the petitioner. Such cost shall be paid on or before 27.11.2015. Upon payment of cost, caveator or applicant shall intimate the same to the Registrar, Testamentary Department and thereafter he would be permitted to remove objections. Caveat then will be restored to the file.

2 Notice of motion stands disposed of in the above terms.

(A. K. MENON, J.)