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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
NOTICE OF MOTION NO. 136 OF 2015  
IN  
NOTICE OF MOTION NO. 91 OF 2014  
IN  
TESTAMENTARY SUIT NO. 47 OF 2014  
IN  
TESTAMENTARY PETITION NO. 1758 OF 2013**

|                                                     |              |
|-----------------------------------------------------|--------------|
| Kamlesh Dunder Vazirani Nee Hansa Nihal<br>Vazirani | ...Plaintiff |
| <i>Versus</i>                                       |              |
| Narendra Nihal Vazirani                             | ...Defendant |

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**Mr. Y. Ghogari**, *i/b M/s. Sonal Doshi & Co., for the Plaintiff.*  
**Mr. P. Diwan**, *with Mr. S. Bhimekar, & Mr. D. Parmal, i/b M/s. DSR*  
*Legal, for the Caveator/Applicant.*

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**CORAM: G.S. PATEL, J**  
**DATED: 30th October 2015**

**PC:-**

1. This is a Notice of Motion for recall of my order dated 13th November 2014, a copy of which is at Exhibit “B” to the Affidavit in Support of this Notice of Motion. By that order, I allowed the

Plaintiff's Notice of Motion for dismissal/discharge of the Caveat. The Caveator was not represented on that day.

2. In paragraphs 4 to 6 of the Affidavit in Support of the present Notice of Motion, the Caveator has set out several reasons why he could not be represented. The Caveator's Advocates appearance was not in fact shown on the Internet board, and neither the Caveator's Advocates nor the alert service to which they subscribed showed the matter on that day. The Caveator says that he presumes that though the matter might have been shown on the printed board (and hence a discrepancy between the digital and hard copy list), in all probability the Caveator's Advocates name must not have been shown on the printed board.

3. It makes little difference even if the name of the Caveator's Advocate was shown on the printed board. I do not think it is reasonable to expect Advocates to check multiple listings and figure out discrepancies, if there be any. Indeed, what seems to have happened is that the matter was listed that day on the weekly board. This is a third list, in addition to the supplementary board and the daily board. That it was so shown is obvious from the header of the order copy, since it is my invariable practice to note the serial number of the matter in the order in the order's digital filename, and the filename is shown in the header. The filename indicates "218", and the 200 series is one used for the weekly board.

4. This is a truly unfortunate mishap. Even if the names of the Advocates for the Caveator were shown, this was on the weekly board and it is entirely possible to have missed that listing. It is not

in dispute that the Caveator was not represented that day. It is far too well settled to admit of dispute that no act of a court should prejudice a party, and, equally that no litigant should suffer on account of a lapse by his or her advocate. That is what seems to have happened on 13th November 2014.

5. The Notice of Motion is made absolute in terms of prayer clauses (a) and (b).

6. In view of this order, the Plaintiff's Notice of Motion no. 91 of 2014 (for dismissal/discharge of the Caveat), as also Plaintiff's other Notice of Motion No. 90 of 2014 (for grant of the Letters of Administration) are both restored to file.

7. Mr. Diwan for the Caveator points out that pursuant to the order of 13th November 2014, the one that I have just recalled, the Plaintiff has moved with a very great deal of expedition and seems to have effected certain transfers of property. I am not assessing those transfers on merits at this stage. These will be decided at the time of hearing of that Notice of Motion. However, the Plaintiff is restrained from acting upon any such transfer, and giving effect to any such transfer or claiming any rights, benefits or equities pursuant to that transfer. It will be open to the Plaintiff in either of the restored Notices of Motions to contend that as a result of these transfers, the Caveat should be discharged.

8. Finally, the inevitable consequence of the recall of the order dated 13th November 2014 is that the Letters of Administration granted pursuant to that order are necessarily recalled/set aside.

Ordinarily, I would have merely suspended the operation of that grant, but Mr. Diwan makes a statement, on instructions, that his client agrees and undertakes to bear and pay all costs attendant on the issue of a fresh grant, should that grant be finally allowed after the Notices of Motion mentioned above are disposed of. This statement is accepted as an undertaking to the Court.

**(G. S. PATEL, J.)**