

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

NOTICE OF MOTION NO. 167 OF 2014

IN

TESTAMENTARY SUIT NO. 51 OF 2014

IN

TESTAMENTARY PETITION NO. 1369 OF 2012

Eutropie Boniface Pereira & Anr.

...Plaintiffs

Versus

Ivor Philip D'Mello

...Defendant

Mr. Denzil D'Mello, i/b Ms. Geeta Sonawane, for the Plaintiff.
Dr. Birendra Saraf, with Ms. Dipti Mistry, i/b M/s. Vaibhav Mehta
& Associates, for the Defendant.

CORAM: G.S. PATEL, J

DATED: 27th July 2015

PC:-

1. This is the Plaintiffs' Notice of Motion for dismissal or discharge of the Caveat. Even on a cursory reading of the Caveat, it would not be possible to accept the prayers of the Notice of Motion. In the Affidavit in Support of the Caveat, the specific grounds taken are that the alleged Will is unnatural and improbable, that the deceased lacked the necessary testamentary capacity, and that the Will sought to be propounded was obtained by coercion

and undue influence. Mr. D'Mello submits that the documents brought on record in the Notice of Motion indicate that the Defendant has in writing accepted the Will and that these constitute admissions. Every admission can be explained, and an opportunity must be given to the Defendant to lead his evidence. No doubt at the trial he will be confronted with these writings. But that does not mean that the documents relied on by Mr. D'Mello can be accepted straight away and the defence ordered to be closed, which would be the effect of allowing this Notice of Motion.

2. In view thereof, the Notice of Motion is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)