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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 42 OF 2015
IN
TESTAMENTARY SUIT NO. 50 OF 2004
IN
TESTAMENTARY PETITION NO. 651 OF 2004**

Rajesh Lalitrai Bhuta	...Plaintiff
<i>Versus</i>	
Dushyant L. Bhuta	...Defendant

Mr. Prayag Joshi, *i/b Mr. Bipin Joshi, for the Plaintiff.*
Mr. D.P. Desai, *for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 19th December 2016

PC:-

1. In this matter, issues have been framed and some evidence has been led. In the meantime, this Notice of Motion is moved for discharge of the Caveat on the ground that the parties arrived at a Memorandum of Understanding, one that is admittedly unsigned (and which is clear from prayer (a) itself, one that seeks an order in terms of the unsigned MoU).

2. There is an Affidavit in Reply dated June 2015, in which, although it is said that there is no dispute about the Memorandum

of Understanding in principle, it is the responsibility of the Plaintiff to complete the reconstruction of the building known as Bhuta Niwas as early as possible and in a time-bound manner. Admittedly, there is no agreement on this aspect of the matter.

3. What the Plaintiff seeks is that an unsigned MoU be taken on record and an order be made thereon, and, second, that the Defendant's caveat be discharged.

4. Neither relief is possible. Had the MoU been signed, the matter may have stood differently. Had the Defendant accepted the MoU without qualification, I might have considered the application. But the Defendant's stand provides some reason for not signing the MoU and for not submitting to an order. It does not matter how slight that reason is. There is no clear agreement and I am not prepared to impose on the Defendant an obligation to adhere to the terms of an agreement that he has not signed and which he says is subject to the fulfilment of certain obligations by the Plaintiff. To do so would be to unduly prejudice the Defendant; the more so when this application is made very late in the life-cycle of this suit, after issues are settled and the trial is under way.

5. The Notice of Motion is dismissed. There will be no order as to costs. I leave it to the parties to negotiate and finalize the MoU if they are able, and this order is not to come in the way of any such settlement or finalization.

(G. S. PATEL, J.)