

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.805 OF 2015
IN
TESTAMENTARY SUIT NO.136 OF 2015
IN
TESTAMENTARY PETITION NO.181 OF 1990
WITH
NOTICE OF MOTION (L) NO.2982 OF 2015**

Dr. Bakul Chandulal Mehta

..... Appellant.
(Orig. Plaintiff)

V/s

Yogesh C. Maniar & Anr.

..... Respondents.

Mr. Sandeep Maurya for the Appellant.

Mr. Rajesh Shah i/b Kaustub Marathe for Respondent No.2.

**CORAM: V. M. KANADE, ACTING CHIEF JUSTICE &
REVATI MOHITE DERE, J.**

DATE: 20th January, 2016

P.C.:-

1. Appellant has challenged the order dated 5th August, 2015 passed by the learned Single Judge. By the said order, the learned Single Judge was pleased to direct the Defendant

to file an affidavit in the suit alongwith copies of affidavits filed by him in the previous interim proceedings. A direction was given to the registry to take this affidavit on file and that the said affidavit was directed to be treated as the Defendant's affidavit in support of the caveat/written statement for further trial of the suit.

2. The learned Counsel for the Appellant submits that in the absence of any caveat and affidavit in support, his Petition could not have been converted into suit. He submitted that direction given by the learned Single Judge in para 3 of the order is contrary to the High Court (Original Side) Rules.

3. It is not possible to accept the submission made by the learned Counsel for the Appellant. As rightly pointed out by the learned Counsel for Respondent No.2, the Letters Patent Appeal under Clause 15 against such order is not maintainable since it is not a final judgment. Secondly, the learned Single Judge has observed that despite best efforts being taken by the Department, they could not trace the caveat or affidavit in support. The learned Single Judge has observed that the issues had been framed in the matter on 21/04/2008 and the Plaintiff and his witness were extensively cross-examined. The learned Single Judge, therefore, under these circumstances in order to rectify the record gave the

aforesaid direction in para 3 of the order. We are therefore not inclined to interfere with the said order passed by the learned Single Judge. Hearing of the suit is expedited.

4. Appeal is accordingly disposed of.

(REVATI MOHITE DERE, J.)

(ACTING CHIEF JUSTICE)