

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***T. & I. J.*****TESTAMENTARY PETITION NO. 914 OF 2016****Sandra G. D'Souza****..... Petitioner****Francis Anslem D'Souza****..... Deceased****Natasha Ann D'Souza****..... Caveator**

Ms. K.Daveriwalla, i/b. Mulla & Mulla & Craigie Blunt & Caroe for the Petitioner.

Mr.S.G.RMohomunny, i/b. Mr.Suresh Dubey for the Caveator.

CORAM : R.D. DHANUKA, J.**DATE : 30th JUNE, 2017****P.C.**

Not on board. Taken on board.

2. Learned counsel appearing for the petitioner states that the petitioner was under impression that the deceased had not made any Will and had thus filed a petition for succession certificate. The petitioner accordingly seeks liberty to withdraw this petition with liberty to file a testamentary petition for probate.

3. Learned counsel states that the petitioner and her son Mr.Dillon D'Souza are the executors under the said alleged Will and would file the testamentary petition for seeking probate of the said deceased. Learned counsel appearing for the caveator has no objection if the petitioner is granted such liberty to withdraw the petition for succession certificate with liberty to file testamentary petition for seeking probate of the alleged Will. The statement is accepted.

4. Insofar as the objections raised by the Office in respect of the caveat filed by the defendant in the succession certificate is concerned, the said objection does not survive. As and when the citation is served upon the present caveator, he can file caveat as well as affidavit in support within the time prescribed. Testamentary Petition No.914 of 2016 is accordingly dismissed as withdrawn with liberty as prayed.

5. In view of the withdrawal of the Testamentary Petition No.914 of 2016, Notice of Motion (L) No.109 of 2017 and Notice of Motion (L) No.110 of 2017 do not survive and are accordingly disposed of.

6. The office is directed to permit the petitioner to adjust the court fees if paid in Testamentary Petition No.914 of 2016 payable against the petition for seeking probate. No order as to costs.

(R.D.DHANUKA, J.)