

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

**NOTICE OF MOTION NO.118 OF 2015
IN
TESTAMENTARY SUIT NO.147 OF 2013
IN
TESTAMENTARY PETITION NO.1179 OF 2012**

Mr. Kaluchand Harakchand Bokadia ... Applicant

In the matter between :

Mr. Kaluchand Harakchand Bokadia .. Plaintiff/Petitioner
Versus
M/s Akshay Vitta Management &
Investment Consultancy Services
Private Limited ... Caveator/Respondent.

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Mr. Rashid Khan a/w Ms. Priyanka Kothari I/b Royston Pereira for the Applicant/Plaintiff.
Mr. Kunal Vaishav a/w Suraj Iyer, Ms. Debashree Mandpe I/b Ganesh & Co. for the Caveator/Respondent.
Mr. Nikhil Mishra for Caveator (Caveat (L) No.360 of 2017).

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CORAM : S.C.GUPTE, J.

DATE : 27 NOVEMBER 2017

P.C. :

. The present Notice of Motion is taken out by the original Petitioner in a petition for probate of the last will and testament of the deceased Miss Hilla Jamshedji Mistry. The Respondent to the Notice of Motion is caveator, who challenges execution and genuineness of the last will and

testament of the deceased. On the basis of the caveat and affidavit in reply of the caveat, the petition has been converted into a testamentary suit. By this Notice of Motion, the Petitioner seeks dismissal of the caveat on the ground that the Respondent has no caveatable interest. It is admitted position that the Respondent does not claim through the deceased, but through a third party, adversely to the interest of the deceased. In these facts, The Respondent/Caveator proposes the caveat with liberty to seek appropriate relief in respect of the property on the basis of his own title. The Respondent is, accordingly, permitted to withdraw the caveat. It shall have liberty to agitate its rights in respect of the property in an appropriate proceedings. Since a caveat now stand withdrawn, no other or further reliefs needs to be granted in the Notice of Motion. It will be open to the Respondent/Caveator to contend in the proceedings filed by it that it has been prosecuting its caveat in the present testamentary petition *bona fide*.

2 Though the petition was converted into a testamentary suit based on the caveat of the Respondent which has been withdrawn as noted above, the petition shall continue as testamentary suit as contested matter, since there is another caveat filed by Jimmy Manoo Batty. The name of Jimmy Manoo Batty shall be shown as defendant in the testamentary suit. The Plaintiff shall accordingly amend the cause title.

(S.C. GUPTE, J.)