

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

**NOTICE OF MOTION NO.13 OF 2017**  
**IN**  
**CAVEAT NO.8 OF 2016**  
**IN**  
**TESTAMENTARY SUIT NO.3 OF 2016**  
**IN**  
**TESTAMENTARY PETITION NO.1879 OF 2014**

Malti Ramakant Koli ...Applicant/Plaintiff

**In the matter between**

Malti Ramakant Koli ...Petitioner

vs

Prakash Bhiwa Keny ....Caveator

....

Mr. Ravish Mishra, i/b. D.R. Tiwari, for the Applicant/Plaintiff.

Mr. Anil S. Gawas, for the Respondent/Caveator.

....

**CORAM : S.C. GUPTE, J.**

**DATED: 7 NOVEMBER, 2017**

**P.C. :**

. Heard learned Counsel for the parties.

2. This Notice of Motion is taken out for dismissal of the caveat filed by the caveator/Respondent. Though the Respondent does have a caveatable interest and is also a beneficiary under the last will and testament of the deceased, of which probate is sought, the objection to the grant is merely on the ground that the Petitioner claims the property

of the deceased, despite directions to the contrary contained in the last will and testament of the deceased. There is nothing to indicate that. Even otherwise, this is no ground to oppose the grant. For maintaining a valid caveat, the caveator has not only to make out his caveatable interest, but also to raise a ground of objection, which is germane to the consideration as to whether or not grant should be made in favour of the applicant. He must either show that the will is not validly executed as required by law or that the deceased had no testamentary capacity. There is nothing in the affidavit in support of the caveat to indicate why the grant in the present case should not be made. The caveator admits the execution of the will as well as the testamentary capacity of the testator.

3. The Notice of Motion is, accordingly, made absolute in terms of prayer clause (a). Office shall now proceed with the issue of grant on the basis that the Testamentary Petition is an uncontested matter. Since the grant is being issued on the basis that it is an un-contested matter, office shall not insist on drawing up of a decree before issuance of the grant.

**( S.C. GUPTE, J. )**