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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 312 OF 2017
IN
TESTAMENTARY SUIT NO. 205 OF 2017
IN
TESTAMENTARY PETITION NO. 1141 OF 2017**

Dicky Eruchshaw Contractor	...Plaintiff
<i>Versus</i>	
Arnawaz Dinyar Patel	...Defendant

Mr M Mistry, with SS Ghosh, i/b Hariani & Co., for the Plaintiff.

**CORAM: G.S. PATEL, J
DATED: 19th July 2018**

PC:-

1. Heard. The dispute is between two siblings. The Plaintiff is the son of the deceased. The Defendant is his daughter.

2. The Notice of Motion is to dismiss the Defendant's Caveat on the ground that she has in her Affidavit in Support of the Caveat said nothing more than that she is entitled to a 50% right, title and interest in the estate of the deceased. This is no ground to discharge the Caveat. That is entirely sufficient. What the Caveat says is that the Will is not the true last testament of the deceased because it

excludes her entirely. There is no requirement in the Succession Act that an Affidavit in Support of a caveat must set out any particular grounds of challenge. It is sufficient for a Caveator to state that the Caveator does not accept the correctness, execution or attestation of the Will. What a probate Petitioner must then do is to prove the Will in its solemn form, i.e. that it was executed and attested as required by Section 63(c) of the Indian Succession Act by a person and who was capable within the meaning of Section 59, of doing so.

3. The Notice of Motion is thoroughly misconceived. It is dismissed. There will be no order as to costs.

(G. S. PATEL, J)