

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

NOTICE OF MOTION NO.127 OF 2014
IN
TESTAMENTARY PETITION NO. 520 OF 2013
WITH
TESTAMENTARY SUIT NO.120 OF 2013
IN
TESTAMENTARY PETITION NO. 520 OF 2013
WITH
TESTAMENTARY SUIT NO. 190 OF 2013
IN
TESTAMENTARY PETITION NO. 776 OF 2013

Kirit Champaklal Vakil

...Applicant

In the matter of

Kirit Champaklal Vakil

...Plaintiff

Vs.

Manisha Kiran Mehta

...Defendant

Dr. Dipesh U. Siroya for Applicant in NMT/127 and for Plaintiff in
TS/190/2013.

CORAM : ARIF S. DOCTOR, J.

DATE : 21st March, 2023

P.C. :

1. The present Notice of Motion has been filed seeking rejection of the caveat filed by one Manisha Kiran Mehta. Learned Counsel submits that she is not a legal heir or in any manner concerned with the estate of the deceased.

2. Learned Counsel invites my attention to an order dated 17th September, 2021 (G. S. Patel, J.) relevant portion of which reads as under:—

“7. In addition, there is a pending Notice of Motion No.127 of 2014 filed by Mr. Siroya for discharge of Manisha Kiran Mehta’s caveat in Testamentary Suit No. 120 of 2013. I am rejecting, but only for now, Mr. Siroya’s submission that this Notice of Motion be made absolute forthwith in view of the dismissal of Ms. Mehta’s Testamentary Petition No 120 of 2013, even though he points out that there is a previous order in which I said that on a dismissal of Ms Mehta’s petition, this Notice of Motion should be made absolute 9paragraph 3 of the order dated 5th December, 2014). I am declining his request for an order today only because Ms. Mehta is not present to oppose that Motion. I am not dismissing the Motion itself. That Notice of Motion is to be listed on 22nd October 2021.”

3. He thereafter invites my attention to the order dated 22nd October, 2021 (R. I. Chhagla J.) in which this Court was pleased to record that the Caveat was absent even on 22nd October, 2021, this Court was pleased to order and direct as follows:—

“2. Considering the order dated 17.09.2021 and the fact that Manisha Kiran Mehta’s has remained absent even today, it would be appropriate prior to making Notice of Motion absolute, to secure the presence of Ms. Manisha Kiran Mehta.

3. In view thereof, the office is directed to issue notice to the Defendant Ms. Manisha Kiran Mehta in Testamentary Suit No.120 of 2013, returnable on 24.11.2021. In addition, the Plaintiff is at liberty to serve the Defendant by private notice either by R.P.A.D and/or by hand delivery and file affidavit of service on or before the next date.

4. It is made clear that Notice of Motion No.127 of 2014 which is for discharge of Manisha Kiran Mehta’s caveat in the

above Testamentary Suit No.120 of 2013 shall be heard first prior to the Testamentary Suit No.190 of 2013 which has been placed for marking of documents of the Plaintiff.

5. Stand over to 24.11.2021. Notice of Motion No.127 of 2014 is also placed on 24.11.2021."

4. Again today no one appeared on behalf of the Caveator, it is clear that the Caveator is not interested in prosecuting the present matter. There is no reason why any indulgence should be shown.

5. It cannot be that a party simply files a caveat and thereafter takes no steps whatsoever to prosecute the same. This is a practice that must necessarily be stopped and deprecated. Therefore, the present Notice of Motion is allowed in terms of prayer clause (a) which reads as under:-

"a. Caveat filed by Defendant may kindly be rejected and office be directed to proceed further in the matter in accordance with law;"

6. Office to expeditiously grant of Probate.

(ARIF S. DOCTOR, J.)