



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

INTERIM APPLICATION (L) NO. 12739 OF 2025

IN

INTERIM APPLICATION (L) NO. 20213 OF 2021

IN

NOTICE OF MOTION NO. 306 OF 2017

IN

TESTAMENTARY PETITION NO. 116 OF 1999

In the matter of:

**Rajnikant Ambalal Kilachand**

... Deceased

In the matter between:

**Amrish Rajnikant Kilachand**

... Applicant

V/s.

**Harsh Rajnikant Kilachand**

... Respondent

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**Mr. Shanay Shah** a/w Mr. Hamza Lakhani and Mr. Rahul Jain for the Applicant.

**Mr. Siddhesh Bhole** a/w Mr. Apoorva Kulkarni i/b SSB Legal and Advisory for the Respondent.

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**CORAM : FARHAN P. DUBASH, J.**

**RESERVED ON : 17<sup>th</sup> JANUARY 2026**  
**PRONOUNCED ON : 18<sup>th</sup> FEBRUARY 2026**

### **Judgment :-**

1. An Executor is the living instrument of the deceased Testator's final Will and stands in a fiduciary capacity, being entrusted with the sacred duty of ensuring that the voice of the Testator, though silenced by death, is carried into effect fully and in a timely manner. The office admits of no personal discretion inconsistent with the testamentary intent, and any undue delay or inaction in administering the estate amounts to a breach of the solemn duty entrusted to him by law. Section 301 of the Indian Succession Act, 1925 (**Succession Act**) empowers the High Court, on an application made to it, to remove and replace an Executor. The present Interim Application is an application preferred under this provision, by a beneficiary under the Will who alleges gross misconduct and mismanagement of the estate on the part of the Executor and accordingly, seeks his removal/substitution.

### BRIEF CHRONOLOGY

2. Before dealing with the merits of the challenge, a brief narration of the facts, insofar as they are necessary for the adjudication of the present dispute, are set out hereunder:-

- A) The Applicant is one of the legal heirs of late Mr. Rajanikant Kilachand (**Testator**) and is also the Sole Executor of the Will of late Mrs. Ramila Rajnikant Kilachand (**Ramila**). The Applicant and the Respondent are real brothers and the sons of the Testator and Ramila.
- B) The Testator had expired on 6 August 1997. Prior thereto, he had executed his last will and testament dated 27 March 1997 (**Will**) wherein, the Respondent – his elder son, was named as the Executor.
- C) On 18 January 1999, the Respondent instituted Testamentary Petition No.116 of 1999 seeking probate of the Will. Ramila lodged a caveat opposing the grant of probate. Ultimately, by an order dated 27 October 2016, probate of the Will came to be granted by this Court in favour of the Respondent.
- D) However, since the Respondent failed to administer the estate within the prescribed timelines, Ramila took out Notice of Motion No. 306 of 2017, *inter alia* contending that despite the grant of probate on 27 October 2016, the Executor (the Respondent / her son) had failed to discharge his duties

expeditiously and that the estate of the Testator remained unadministered and as a result, she was deprived of her legacy under the Will. Accordingly, a direction was sought against the Respondent to complete the distribution of the estate of the Testator expeditiously and within a period of two months.

- E) By an interim/ad-interim order dated 18 September 2019 passed in Notice of Motion No. 306 of 2017, this Court, *inter alia*, directed the Respondent to file an updated chart setting out the status of the entire estate of the Testator (several items of which, the current status was not ascertained by the Respondent as on that date) whilst further directing that all dividends on the shares standing in the name of the Testator should be credited through ECS into a designated bank account and that the Respondent should instruct the Bankers that, until further orders, all dividends received in the said designated bank account be transferred to the account of Ramila.
- F) Despite the aforesaid order and repeated communications addressed in that behalf by Ramila, it appears that the Respondent failed to file and furnish the requisite updated chart.

- G) In view thereof and considering the continued failure on the part of the Respondent to complete the administration and distribution of the Testator's estate, Ramila was constrained to file Interim Application (L) No. 20213 of 2021 seeking a direction against the Respondent / Executor (her son) to complete administration and distribution of the estate within one month, or in the alternative, replacement of the Respondent as the Executor (of the estate of her deceased husband, the Testator) with any other person, this Court may deem fit.
- H) Unfortunately, during the pendency of Interim Application (L) No. 20213 of 2021, Ramila passed away on 18 February 2024 still awaiting her legacy under the Will of her deceased husband.
- I) The Applicant thereafter filed Interim Application (L) No. 13442 of 2024 seeking to amend Interim Application (L) No. 20213 of 2021, as well as Notice of Motion No. 306 of 2017, so as to prosecute the said proceedings, in his capacity as her legal heir and beneficiary under (his mother) Ramila's Will. By an order dated 10 June 2024, the said Interim Application came to be allowed.

J) Subsequently, by an order dated 29 January 2025, Interim Application (L) No. 20213 of 2021 (**29 January 2025 Order**) came to be disposed of by this Court by a detailed and reasoned order. This Court recorded a categorical finding that the Respondent was guilty of defying his duties as an Executor and the order granting Probate in his favour. Notwithstanding such express finding against the Respondent, this Court held that it would not be appropriate to straightaway remove him as Executor and held that he deserved an opportunity to make amends. In these circumstances, it was held that despite this opportunity, if the Respondent still fails to administer the estate, he would be liable to be removed as the Executor and accordingly, partly allowed the said application. The relevant portion of the operative part of the said order is reproduced hereunder –

- “(i) *The Respondent is directed to distribute money standing to the credit of the account of the testator, movables / securities and sale proceeds of the movables / securities within a period of two months from the date of this order.*
- (ii) *The Respondent shall distribute the estate comprising other properties, including the immovable properties, within a period of six months from the date of this order.*

- (iii) *In the event of default on the part of the Respondent to distribute movables/securities, monies and/or sale proceeds of the movables/ securities, within the aforesaid period of two months, the Respondent would render himself liable to be removed from the Office of the executorship.*
- (iv) *In the event of such failure, the applicant shall be at liberty to move the Court seeking removal of the Respondent and further directions for the administration of the estate of the testator.*
- (v) *The Interim Application stands disposed"*

*(emphasis supplied)*

- K) The 29 January 2025 Order has not been challenged by any party, including the Respondent and therefore the same has attained finality and is binding on the parties.
- L) The Applicant addressed a letter on 6 February 2025 to the Respondent calling upon him to take necessary steps in furtherance of the 29 January 2025 Order.
- M) The period of two months prescribed under the 29 January 2025 Order for distribution of the movable assets which were part of Testator's estate expired on 29 March 2025. On the said date, the Respondent addressed a letter to the Applicant stating that certain shares were yet to be transmitted and that he was in the

process of filing an appropriate application before this Court seeking permission in that regard.

- N) In the meantime, on 8 May 2025, the Respondent filed an Interim Application (L) No. 14846 of 2025 seeking certain modifications to the 29 January 2025 Order, and further seeking appropriate directions against the concerned share transfer agents to effect transmission of the shares standing in the name of the testator in favour of the Respondent. The said Interim Application continues to remain pending today without any orders having been passed thereon. Notably, the said Interim Application was served upon the Applicant only on 12 January 2026 during / just prior to the hearing of the present Interim Application.
- O) The period of six months prescribed under the 29 January 2025 Order for completing the distribution of the immovable properties forming part of the Testator's estate expired on 29 July 2025.
- P) On 20 October 2025, the Respondent addressed a letter to the Applicant stating that a partial distribution had been effected from the estate of late Ambalal Kilachand (father of the



Testator), as well as from the proceeds arising from the sale of the Patan property.

3. In these circumstances, the present Interim Application came to be filed by the Applicant seeking removal of (his brother) the Respondent, as Executor of the Will under Section 301 of the Succession Act alleging gross misconduct and mismanagement of the estate on his part. On 13 January 2026, the Respondent filed his reply opposing the present Interim Application.

SUBMISSIONS OF THE PETITIONER

4. Mr. Shanay Shah, learned counsel who appears on behalf of the Applicant, submits that the Respondent has demonstrated a persistent and willful disregard of this Court's directions. He draws my attention to the 29 January 2025 Order, whereby a clear and time-bound framework was laid down for the disposal and distribution of the movable and immovable assets forming part of the estate. Despite the unequivocal mandate of this Court, he asserts that there has been no meaningful compliance on the part of the Respondent. He is at pains to urge that his mother, Ramila, during her lifetime had repeatedly pleaded with her son, the Executor/Respondent to administer and execute the estate of her deceased husband, the Testator, so

that she could enjoy the legacy that was given to her under the Will. However, despite such requests and applications made by Ramila in this Court (*Notice of Motion No. 306 of 2017 and Interim Application (L) No. 20213 of 2021*) the Respondent deliberately failed to comply with his obligations which ultimately resulted in her demise on 18 February 2024, almost 8 years after probate of the Will was granted in favour of the Respondent, and that too, without getting her full entitlement thereunder.

5. He further submits that the probate of the Will was granted as far back as 27 October 2016, yet nearly a decade later, the estate still remains undistributed and such prolonged inaction amounts to a failure to discharge the fiduciary obligations of an Executor, effectively rendering the Will nugatory in its operation. He also points out that the Respondent is guilty of mismanagement of the estate of the Testator.

6. Mr. Shah further submits that the Respondent has dishonestly attempted to justify his continued inaction under the guise of purported preconditions which have no basis either in the Will or in law. In particular, he states that the Respondent has continued to insist that the Applicant executes a Memorandum of Family Settlement as a condition precedent to the distribution of the estate of the Testator. Mr. Shah is at pains to point out that this very contention was specifically raised, considered, and

unequivocally rejected by this Court in the 29 January 2025 Order. He therefore submits that the Respondent cannot be permitted to reagitate grounds that stand concluded, nor can he rely upon a self-imposed condition to justify defiance of judicial directions and such conduct evinces a deliberate obstruction of the due administration of the estate and constitutes a clear breach of the Respondent's fiduciary duties as an Executor. He therefore seeks removal of the Respondent as Executor of the Will of the Testator.

#### SUBMISSIONS OF THE RESPONDENT

7. *Per contra*, Mr. Bhole, learned counsel appearing on behalf of the Respondent submits that his client has made earnest efforts to comply with the obligations cast upon him in the 29 January 2025 Order. He contends that any delay, if at all, in administration of the estate of the Testator was occasioned by circumstances beyond the Respondent's control and cannot be attributed to willful default or neglect on his part. He vehemently denies the allegations of mismanagement made against the Respondent.

8. Mr. Bhole contends that there was a substantial delay in the grant of the probate itself due to the acts and objections of Ramila, which consequently delayed the process of distribution of the estate of the Testator. He further contends that even post the grant of probate, complete distribution was not possible as both, Ramila and the Applicant declined to

execute the proposed Memorandum of Family Settlement, which according to his client was necessary to effectuate distribution of certain pending assets.

9. It is further submitted that difficulties arose in relation to the transfer of shares which were held jointly by the Testator and Ramila, as the concerned companies, registrars, and share transfer agents declined to effect the transmission of shares to the Respondent. Additionally, he contends that certain shares came to be transferred to the Investor Education and Protection Fund owing to non-encashment of dividends for seven consecutive years, thereby disabling immediate distribution. Mr. Bhole submits that, notwithstanding the aforesaid constraints, the Respondent has substantially complied with the directions contained in the 29 January 2025 Order.

10. He draws my attention to a detailed chart placed on record setting out the present status of the assets which remain to be administered despite the grant of probate of the Will on 27 October 2016. This chart is titled, “ *Status of Assets to be administered as per Probate of late Rajnikant Ambalal Kilachand* ”. In addition, he has also tendered a statement specifying the details and particulars of the shares and monies distributed by the Respondent after the 29 January 2025 Order, in order to demonstrate the steps taken by him towards due administration of the estate. He therefore

submits that there is no mismanagement or misconduct on the part of the Respondent, as falsely alleged by the Applicant and therefore his client ought not to be removed as the Executor of the Will.

11. In support of his contention, he has placed reliance on *Dr. Subhada Mithilesh V/s. Prabhakar Deolankar*<sup>1</sup> and *Bagchi V/s. Hrishikesh Sanya*<sup>2</sup> and submits that the Respondent ought not to be removed as Executor, as no statutory grounds of the nature contemplated under the governing provision, have been made out to warrant such removal.

ANALYSIS, REASONS & FINDINGS

12. I have considered the submissions advanced by the parties and have also perused the material placed on record by them. The record reveals that the Testator passed away on 6 August 1997. Thereafter, the Respondent obtained probate of the Will on 27 October 2016. However, admittedly, till date, the entire estate of the Testator remains to be administered. During this prolonged period, Ramila – the widow of the Testator, was deprived of her legacy under the Will and despite her many requests and repeated applications, the estate was not fully administered during her lifetime. In the bargain, she passed away on 18 February 2024 still seeking what her late husband had left behind for her several decades ago. However, these facts

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<sup>1</sup> 2018 SCC OnLine Bom 21424

<sup>2</sup> 1948 SCC OnLine All 253

alone are not enough for the Applicant to be entitled to the removal of the Respondent as the Executor. In order to succeed in the present Interim Application, the Applicant would have to prove that there was gross misconduct on the part of the Respondent in administration / distribution of the estate of the Testator which would warrant his removal as Executor, as more particularly prescribed under Section 301 of the Succession Act.

13. Accordingly, since it is an admitted position that (at least part of) the estate of the Testator remains to be distributed by the Respondent, let us analyze the reasons and grounds given by the Respondent, who seeks to explain this delay. In the reply dated 13 January 2026 (**reply**), paragraph 7 lists seven reasons / justifications of delay, which are taken up for consideration, as under:

- (a) First and foremost, it is pointed out that despite Testamentary Petition being filed as far back as in 1999 seeking probate of the Will, the same was converted into a Testamentary Suit on account of a caveat being filed by Ramila which ultimately came to be dismissed on 30 August 2011 before probate came to be granted on 27 October 2016 and as a result thereof, the Respondent cannot be blamed for delay in administering the estate. However, the present Interim Application does not seek

to blame the Respondent for this delay between 1999 and 2016. Instead, the delay and gross misconduct on the part of the Respondent that is alleged is only for the period post 2016 viz. 9 years and therefore, this reason / justification of delay is of no assistance to the Respondent.

- (b) The second and seventh reasons / justifications of delay that is sought to be given is that the assets of Rajnikant Ambalal Kilachand (RAK) HUF can be distributed only after the partition of the RAK – HUF takes place on the execution of the Deed of Partition / Memorandum of Family Settlement which document, Ramila and the Applicant have repeatedly refused to sign. However, this ground is not available to the Respondent inasmuch as, the very same ground was urged by him in the earlier Interim Application (L) No. 20213 of 2021 and expressly rejected in (*paragraph nos. 15 to 19 and 24 to 27 of*) the 29 January 2025 Order which has recorded a categoric finding, after analyzing the judgments cited before it, that such insistence on the part of the Respondent is in the teeth of his duties as an Executor under the Will and provisions of the Succession Act, in particularly Section 317 thereof. This Court has already held that once Probate is obtained, the Respondent

was bound to administer the estate strictly in accordance with the Will and he cannot impose any additional conditions which have not been propounded in the Will, as a pre-condition to him administering the estate. This Court further held that the indemnity which the Respondent sought as a pre-condition for the distribution of the estate, was in the teeth of the provisions of the Succession Act. The relevant paragraphs of the 29 January 2025 Order which record the said findings are reproduced hereunder, for the sake for convenience:

*“18. Lastly, the draft of Memorandum of Family Settlement, inter alia, contains a clause that the parties agree and accept the correctness of all the accounts of RK-HUF from the date of death of Rajnikant till date. The parties undertake not to file any suit or proceedings in any Court of law challenging the correctness of the accounts and the binding character of the family settlement.*

*19. The aforesaid stand of the Respondent is not in consonance with the duties of an executor under the Will. The executor is enjoined to distribute the estate of the testator in accordance with the disposition thereunder. Once the Respondent obtained a Probate by filing an affidavit to distribute the estate in accordance with the Will of the testator, on first principles, it is not open to the executor to put condition for acceptance of the bequeath under the Will and obtain an indemnity from the beneficiaries. If the executor acts in derogation of the Will and sets up condition which has the effect of delaying or defeating the interest of the beneficiaries, is the Testamentary Court denuded of the authority to pass appropriate orders to ensure due administration of the estate?”*



...  
...

*"26. As noted above, the Respondent does not dispute that certain portion of movables and securities has yet not been distributed. The Respondent insists for the execution of the Memorandum of Family Settlement, acceptance of accounts, submitted by the Respondent, as true and correct, and withdrawal of the proceedings and an undertaking not to file proceedings as condition precedent for further distribution. This stand of the Respondent appears to be in teeth of the duties of the Respondent as an executor under the Will and the provisions of the Indian Succession Act, 1925.*

*27. As noted above, under Section 317 of the Act, 1925, the executor, to whom the Probate has been granted, is statutorily enjoined to exhibit an inventory containing true and full estate of all the properties in possession and all the credits and also all the debts, and, thereafter, exhibit the account of the estate showing the assets which have come to his hand and the manner they have been applied or disposed of. The statutory obligation to furnish true and correct account is at the pain of prosecution, as sub-section (4) of Section 317 declares that the exhibition of an intentionally false inventory and account under the said sub-section shall be deemed to be an offence under Section 193 of the Indian Penal Code. The indemnity which the Respondent seeks as a pre-condition for the distribution is, thus, plainly in derogation of the statutory mandate."*

- (c) The third and fifth reasons / justifications of delay that are sought to be given is that dividend warrants which were stated to have been posted at the registered address of Ramila were either received late or not received by her or on account of non-encashment of dividend for a continuous period of 7 years

which is stated to have resulted in the said companies transferring the dividend and the shares to the Investor Education and Protection Fund (IEPF) account. This reason is bereft of any merit inasmuch as, on 18 September 2019, this Court had passed a specific order directing the Respondent to inform all the companies that all dividend was to be paid through ECS credited to a designated account, which was then to be transferred, within 4 working days, to Ramila's account. Moreover, besides this bare assertion made in paragraph 7(c) of the reply, neither are any details of such shares provided nor is there any supporting documentary evidence produced by the Respondent to corroborate the same, including interalia, the date/s on which such transfer was effected to the IEPF account, etc. Even otherwise, if the Respondent was aware that shares and dividends of various companies were transferred to the IEPF account which resulted in Ramila being deprived of the said shares and dividend, there is no explanation and/or justification whatsoever provided by the Respondent as to what steps, if any, have since been taken by him to get these shares and dividend transferred out of the IEPF account and if not, why no steps were taken by him.

(d) The fourth reason / justification of delay that is sought to be given is that several Companies / their Registrars and Share Transfer Agents have refused to transmit shares of their Companies in the name of the Executor for the shares which were jointly held by the Testator and Ramila. Here again, save and except this bare averment in paragraph 7(d) of the reply, absolutely no details of such Companies have been provided nor is there any supporting documentary evidence produced by the Respondent to corroborate the said assertion including interalia the date/s on which such refusal is stated to have taken place and what steps, if any, have been taken by him, pursuant thereto. In fact, it would not be out of place to mention that the same ground has already been taken by the Respondent in his reply to Interim Application (L) No. 20213 of 2021 and after considering such ground, the 29 January 2025 Order came to be passed. In such circumstances, if the Respondent was desirous of taking the same ground to explain the delay caused post the 29 January 2025 Order, it was incumbent upon him to enumerate and provide specific details in this regard.

(e) The sixth reason / justification of delay that is sought to be given is that the since the share of the Testator in the immovable

properties from the Estate of late Ambalal Kilachand has not been received by the Executor, he is unable to distribute and administer the same. Whilst in principle, this reason / justification of delay is available to the Respondent, I am unable to accept the same since the reply is totally silent in identifying which items of the estate of the Testator remained be administered for this reason. As an Executor, the Respondent is statutorily obligated to make best efforts so as to ensure that administration / distribution of the Testator's estate takes place in a timely manner and as such, he ought to have taken steps and made sincere efforts in that regard with the Administrator/s or Executors of the Estate of late Ambalal Kilachand. In the present case, no supporting documents and/or correspondence has been produced or even relied upon by the Respondent evincing steps, if any, taken by him with the Administrator/s or Executors of the Estate of late Ambalal Kilachand in this regard making any inquiry into this.

14. Moreover, considering the strong allegations made by the Applicant against the Respondent in the present Interim Application and the relief of his removal as Executor sought therein, it was incumbent on the Respondent to have expressly itemized the estate of the Testator and

thereafter, attributed, on oath, one (or more) of the seven reasons prescribed in paragraph 7 of the reply to each item thereunder. However, this has admittedly not been done and instead, the Respondent has very casually given these seven reasons / justifications of delay without any details and/or particulars and more importantly, without any supporting documentary evidence.

15. (Presumably) Realising this, during arguments, Mr. Bhole tendered the chart titled, “ *Status of Assets to be administered as per Probate of late Rajnikant Ambalal Kilachand* ” (**chart**) and sought to make arguments on the individual items of the estate of the Testator, on such basis. In this chart, the Respondent has described each item forming part of the estate of the deceased, including the paragraph number of the Will and the Schedule of Assets to the Testamentary Petition in which, such item has been identified. The chart also ascribes a monetary value to each such item and then, sets out the beneficiary/ies thereof, under the Will. Lastly, under the column titled “*Status*”, the chart seeks to explain the delay in administering / distributing such item by the Respondent. On a first blush, this chart appears to satisfactorily set out and explain the delay in administration of each item. However, on a closer scrutiny, it is revealed that most of the reasons assigned therein, have neither been taken nor pleaded by the Respondent, on oath, in his reply.

16. As and by way of example, a few items/assets from the chart are highlighted hereunder. In respect of the item – ***“500 shares of EuPharma Laboratories Ltd.”***, the status column mentions *“The Shares were sent for transmission to the Company, which have been returned by the Postal Authority with a remark ‘NOT FOUND’ ”*. Similarly, in respect of the next item – ***“2400 shares of Birla Global Finance Limited held jointly in 2 Folios...”***, the status column mentions *“Accumulated Dividend of Rs. 55,866.70 was given to Ramila Kilachand on 20.07.2018 ... .. The above shares at (ii) & (iii) are to be transmitted in the name of the Executor, but the Companies are not responding. The shares will be transmitted to Vedika Amrish Kilachand as and when transmitted to the Executor”*. So also, in respect of the item – ***“20 Equity Shares of Rs. 10/- each of United Breweries Ltd., Bangalore”***, the status column mentions *“The procedure to get it released and then transfer to Vedika Amrish Kilachand is under process”*. Similarly, in respect of the item ***“400 Equity shares of Rs. 10/- each of Brite Automotive & Plastics Ltd. [BAPL], Indore, M.P.”***, the status column mentions *“On 01.04.1999, the Company was merged with Bright Brothers Ltd. As per the Scheme of Merger, 200 shares of Bright Brothers Ltd. were allotted. The share certificates are not received by the Executor ... .. The said shares will be transferred to Vedika Amrish Kilachand when received by the Executor”*. So also, in the case of, ***“200 Equity Shares of Rs. 10/- each of***

*Simbhaouli Sugar Ltd., Ghaziabad, Uttar Pradesh. Increased to 234 shares.”*, the status column mentions *“The shares were sent to the Company several times but returned without transmitting in the name of the Executor. The same will be transferred to Vedika Amrish Kilachand when received by the Executor”* and similarly, in case of *“300 Equity Shares of Rs. 10/- each of Kothari Industrial Corporation. Ltd., Mungambakkam, Chennai”*, the status column mentions *“The shares were sent to the Company several times but returned without transmitting in the name of the Executor. The same will be transferred to Vedika Amrish Kilachand when received by the Executor”*.

17. None of these (and several other) reasons that are set out in the ‘*status*’ column of the chart for other items/assets have been deposed to by the Respondent, on oath, in his reply. Moreover, the Respondent has also not produced any documentary proof to corroborate and/or support the said assertions, all of which are factual in nature and as a result, are required to be backed with documentary proof, if they are to be accepted by this Court. Such conduct, in my view, amounts to an attempt to mislead this Court and is clear disregard to the provisions of law, and the 29 January 2025 Order, which had prescribed specific directions for distribution of the estate of the Testator in a time-bound manner. The Respondent has not demonstrated what steps, if any, he has taken in respect of the items/assets that are set out in the chart after the passing of the 29 January 2025 Order, whether, within

the prescribed time period for administering the estate or even thereafter. Such a lackadaisical attitude on his part demonstrates a complete disregard for the orders passed by this Court. In the premises, I have no hesitation in disregarding the said chart sought to be relied upon by the Respondent.

18. Considering the aforesaid, I find much merit and substance in the submissions made by Mr. Shah on behalf of the Applicant. The prolonged and unexplained inaction on the part of the Respondent amounts to a clear failure to discharge the fiduciary obligations of an Executor. Moreover, the continuous non-compliance of the 29 January 2025 Order demonstrates a willful disregard of directions of this Court. This is not the first chance that has been afforded to the Respondent. On the contrary, it is his third, if we consider Notice of Motion No. 306 of 2017 and Interim Application (L) No. 20213 of 2021 in which the 29 January 2025 order came to be passed, expressly giving him a timeline, in which, he was required to act and complete the exercise of administration of the estate of the Testator. However, despite such repeated opportunities, the Respondent has stood steadfast, both, in his attitude and approach which reveals total disregard to his fiduciary duties as Executor.

19. For the sake of convenience and ready reference, Section 301 of the Indian Succession Act, 1925 is reproduced hereunder –



**“301. Removal of executor or administrator and provision for successor —** *The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.”*

20. A plain reading of this section reveals that the Court is vested with a discretionary power to remove an Executor who has been named as such, by the Testator in the Will. When an Executor is so named by a Testator in his Will and entrusted with the responsibility to administer his estate, the Testator reposes implicit confidence in the Executor to carry out his/her wishes in a timely manner. It is now well settled by a catena of judicial precedents that when a Court, upon consideration of all the relevant material placed before it, comes to a conclusion that the continued functioning of the Executor named under a Will would be detrimental to the estate or prejudicial to the interests of the beneficiaries, the Court is empowered and justified in exercising its authority to remove such Executor. This is particularly so, where there exists clear material on record demonstrating gross misconduct, mismanagement of the estate, breach of fiduciary duty, or conduct amounting to usurpation or obstruction of the due administration of the estate.

21. In the present case, the material on record discloses clear misconduct on the part of the Executor. A perusal of the 29 January 2025 Order clearly reveals that this Court had expressly noted the failure on the part of the Executor in discharging his duties. However, instead of exercising its power under Section 301 of the Succession Act at that time, the Court thought it fit and accordingly granted him one more opportunity to complete the pending administration of the estate of the Testator within reasonable timelines stipulated therein. The said 29 January 2025 Order has not been challenged by the Respondent and is accordingly, final and binding on him. Despite the indulgence and opportunity granted to the Respondent in the 29 January 2025 Order, he has continued to withhold and failed to complete the administration of the estate of the Testator by citing vague and untenable grounds, which I have already considered hereinabove and rejected. Such persistent non-compliance demonstrates a conscious disregard of his fiduciary duties as Executor and also reveals his indifference to orders passed by this Court. In these circumstances, I refuse to be a mute spectator and stand by, allowing the Respondent to administer the estate, as per his own whims and fancies. The facts, in the present case, clearly satisfy the requirements prescribed under Section 301 of the Succession Act for removal of the Respondent as the Executor under the Will of his deceased father and Testator, late Rajnikant Ambalal Kilachand.

22. In *Dr. Subhada Mitilish (supra)*, this Court observed that an Executor ought not to be removed unless there is clear and cogent material to show that his continuance is detrimental to the estate or would frustrate the due execution of the Will. In the present case, the facts clearly bear out such a position. Not only has Ramila waited for 8 years for her legacy under the Will, before passing away, but the Applicant continues to wait for his legacy, even today. Such conduct on the part of the Respondent is not only clearly detrimental to the estate but also frustrates the due execution of the Will. The Testator would never have imagined and wanted his beneficiaries to have to wait for almost 30 years to receive their legacy under this Will. Hence, this judgment does not assist the Respondent but instead, can be used against him.

23. Similarly, in *Bagchi (supra)*, the Allahabad High Court held that where an Executor has duly performed the obligations cast upon him under the Will, recourse to Section 301 would not ordinarily arise. However, the facts of the present case stand on an entirely different footing. The Respondent has failed to complete the administration of the estate and has not discharged the duties expected of him as an Executor. The principles laid down in the aforesaid decisions therefore, afford no assistance to the Respondent and in fact, undermines his own submissions.

24. For all the aforesaid reasons, I am satisfied that the present Interim Application is well-founded and is required to be allowed. The facts of this case reveal a rather disturbing position wherein the Respondent, acting as the Executor, has failed to ensure and complete distribution and administration of the estate of the Testator in accordance with the Will, resulting in his own mother, Ramila, who was one of the three main beneficiaries (with the other two, being the Applicant and the Respondent himself) being deprived of the full legacy and rightful entitlement that was bequeathed to her from her late husband's estate, since she, unfortunately, passed away in the meanwhile. These circumstances also demonstrate not just merely delay, but a complete failure to on the part of the Respondent to discharge his fiduciary obligations as the Executor, causing grave and irreparable prejudice to a beneficiary during her lifetime. The material on record also establishes sustained misconduct on his part which is detrimental to proper administration of the estate. In order to safeguard the interests of the beneficiaries and in the interest of justice, I, therefore, deem it necessary to exercise powers under Section 301 of the Indian Succession Act, 1925, and remove the Respondent as the Executor of the Will of late Rajnikant Ambalal Kilachand.

25. Accordingly, the present Interim Application is disposed of in terms of the following order:

**:: ORDER ::**

- i. The Respondent is hereby removed as the Executor of the Will of late Rajnikant Ambalal Kilachand.
- ii. Justice Dilip Babasaheb Bhosale (Retired Chief Justice of the Allahabad High Court) is hereby appointed as the Administrator of the estate of late Rajnikant Ambalal Kilachand.
- iii. Within a period of one month from the date of this order, the Respondent is directed to handover all the records/documents pertaining to the estate of late Rajnikant Ambalal Kilachand to the Administrator.
- iv. Within a period of 21 days from the date of this order, the Respondent is directed to file an Affidavit, on oath, disclosing the full and true inventory of the entire estate of late Rajnikant Ambalal Kilachand and the manner in which the estate has been administered by him, till the date of this order and also furnish a copy thereof to the Administrator and the Applicant.
- v. The Administrator shall distribute the entire pending estate of late Rajnikant Ambalal Kilachand including all the movable and immovable properties, as expeditiously as possible and preferably, within a period of six months from the date on which

the Respondent hands over the complete set of records/documents pertaining to the estate of late Rajnikant Ambalal Kilachand to him.

vi. The Administrator is at liberty to determine an honorarium that would be payable for the services rendered by him. This amount shall be paid out of the estate of late Rajnikant Ambalal Kilachand.

vii. The present Interim Application is accordingly disposed of with no order as to costs.

viii. All parties shall act on a copy of this order, digitally signed by the Personal Assistant / Private Secretary of this Court.

**( FARHAN P. DUBASH, J. )**

26. After the order was pronounced, Mr. Siddhesh Bhole, learned Counsel who appears on behalf of the Respondent seeks stay of this order. Considering that this order prescribes certain timelines within which the Respondent is directed to act, he has sufficient time to challenge the order. Even otherwise, considering the observations and findings in this order, the same cannot be stayed. Accordingly, the request is rejected.

**( FARHAN P. DUBASH, J. )**

Jyoti Pawar

**JYOTI  
PRAKASH  
PAWAR**

Digitally signed by  
JYOTI PRAKASH  
PAWAR  
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