IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.96 OF 2026
WITH
INTERIM APPLICATION NO.3321 OF 2026

Harsh Rajnikant Kilachand,]
of Bombay Indian Inhabitant,]
residing Kilachand Bungalow]
95, Nepean Sea Road, Malabar Hill]
Bombay – 400 006.] … Appellant/Applicant

V/s.

Amrish Rajnikant Kilachand]
Sole Executor of Late Mrs. Ramila]
Kilachand, of Bombay, Indian Inhabitant]
residing at 2A, Sunita Ridge Road]
Malabar Hill, Bombay, - 400 006.] … Respondent

Mr. Viraj Parikh a/w Mr. Naresh Chhedda i/by Mr. Avyaan Legal for the Appellant/Applicant.

Mr. Shanay Shah a/w Adv. Hamza Lakhani, Mr. Rahul P. Jain for the Respondent.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 23rd June, 2026.
PRONOUNCED ON : 22nd July, 2026.

Judgment (Per : Kamal Khata, J) :-

1) By this Appeal, the Appellant assails the Order dated 18th February, 2026 ('impugned Order'), passed by the learned Single Judge in an Interim Application filed in a Notice of Motion in the Testamentary

SUMEDH NAMDEO SONAWANE Digitally signed by SUMEDH NAMDEO SONAWANE Date: 2026.07.23 09:38:27 +0530

Petition. The Appellant is aggrieved by his removal as Executor of the Will of his late father, Rajnikant Ambalal Kilachand, dated 27th March, 1997.

2) The principal ground on which the impugned Order removes the Appellant as Executor is his prolonged and unexplained failure to discharge his fiduciary obligation of distributing the estate.

3) Mr. Parikh, learned counsel for the Appellant, submits that the principal cause of the delay in distributing the estate was the obstructive conduct of the Respondent. He submits that even after probate was granted in the Appellant's favour, various criminal proceedings were instituted against him alleging breach of trust and siphoning off of the deceased's estate.

4) According to the learned counsel, the learned Single Judge failed to appreciate that a substantial portion of the estate had already been distributed to the beneficiaries, as set out in the statement of payments and the status of assets annexed to the Affidavit dated 13th January, 2026. He therefore submits that the learned Single Judge's characterization of the Appellant's conduct as "sustained misconduct" and a "conscious disregard of his fiduciary duties" is contrary to the evidence on record. According to him, the undistributed estate consisted predominantly of three categories of assets, each beyond the Executor's control: first, shares that third parties had simply refused to transfer; second, shares that could not be transferred because their mother, Ramila R. Kilachand, had for seven years declined to

hand over the dividend warrants required for encashment and third, shares of companies that had since been struck off, placed in liquidation, or rendered defunct, and were therefore incapable of transmission. The remaining assets said to be undistributed formed part of the estate of Ambalal Kilachand, which the Executor had never received and consequently could not distribute.

5) Mr. Parikh submits that the learned Judge failed to appreciate that the Appellant's inability to complete the distribution of the residual estate was not attributable to any willfulness, dishonesty, or neglect, but to impediments genuinely beyond his control.

6) According to him, the learned Judge failed to take into account the Appellant's own Interim Application, which sought directions to specifically named companies and their Registrars and Share Transfer Agents to effect transmission of the identified shares, and which additionally sought modification of the Order dated 29th January, 2025, so as to remove the impediments to distributing assets not yet received from the estate of Ambalal Kilachand. He submits that the Executor has, in effect, been penalized for failing to achieve the very relief for which he had sought the Court's assistance. The transfer of shares to Vedika Amrish Kilachand, he adds, could not be completed on account of a technical glitch faced by the Appellant.

7) He submits that the finding of gross misconduct against the

Appellant was unwarranted since the Appellant was contending with external roadblocks in distributing the remainder of the estate. He further submits that the finding characterizing the Appellant's explanation for the delay as mere "bare assertions" is factually incorrect, as that explanation was supported by contemporaneous documentary evidence placed before the Court. He drew our attention to Ground 'H' of the Appeal to submit that each of the learned Judge's findings was incorrect for the reasons set out therein.

8) According to him, the learned Judge's findings are contradicted by the Court's own record. He submits that any deficiency in the pleadings could have been cured by granting an opportunity to file a supplementary Affidavit. He further submits that the learned Single Judge distinguished the two decisions in *Dr. Subhada Mithilesh vs. Prabhakar Deolankar* reported in *(2018) SCC OnLine Bom 21424* and *Bagchi vs. Hrishikesh Sanyal* reported in *(1948) SCC OnLine All 253*, without engaging with the legal propositions laid down in those decisions or explaining why those principles were inapplicable to the facts of the present case.

9) He submits that the learned Judge ought not to have treated the Order dated 29th January, 2025 as effecting an automatic removal of the Executor upon non-compliance; instead, it ought to have been read as granting liberty to apply for removal, with an opportunity to the Appellant to explain the non-compliance. According to him, removing the Executor

without affording him such an opportunity and without a fair and unbiased consideration of his explanation, renders the impugned Order drastic and disproportionate. He finally submits that the impugned Order runs contrary to the well settled principles governing the removal of an Executor under Section 301 of the Indian Succession Act, 1925, and is consequently liable to be set aside.

10) Mr. Shanay Shah, learned Advocate for the Respondent, took us through the impugned Order to submit that, the learned Single Judge had recorded clear findings on the Appellant's conduct, and that this is indeed a fit case for removal of the Executor.

11) We have heard both learned Advocates and perused the record.

12) The impugned Order shows that the Executor's attempts to delay the distribution of the estate were not confined to the period between 1999 and 2016 but continued even after probate was granted in 2016. We find that its almost ten years since probate was granted, and the distribution of the estate remains incomplete even today. That fact alone that, an estate left undistributed for over a decade would, in our view, furnish sufficient ground for removal of the Executor. Whatever steps the Appellant claims to have taken were plainly insufficient, since they have not culminated in the complete distribution of the estate to the beneficiaries. Despite having been granted opportunities by the Court the Appellant has failed to distribute the estate.

13) The Order dated 29th January 2025 which has not been challenged and consequently has attained finality admittedly is not complied with. Most importantly the record indicates that the beneficiaries do not trust the executor anymore. In these circumstances, we find no justifiable reason to permit the Appellant to continue as an Executor endlessly and thereby deprive the benefit under the estate to the beneficiaries for a disproportionate period of time. We find it just and equitable, in the present scenario to allow the Court appointed Administrator complete the distribution within the period indicated in the impugned order.

14) The reasons given by the learned Judge for distinguishing the Judgments are correct. The principles enunciated in the two Judgments are not a formula to be adopted in each case by default. The facts of those cases were different from the present one that is set out by the learned Judge in paragraph Nos.22 and 23. Therefore, the Single Judge was right when he held that, it was inapplicable to the facts of the present case.

15) The Order of the learned Single Judge is neither arbitrary, nor perverse. It is, in fact, a well-reasoned Order that has considered all the facts, the contentions of both parties, and the documents on record. We accordingly find no reason to interfere with the Order of the learned Single Judge.

16) The Appeal is dismissed, with no order as to costs.

17) In view of disposal of Appeal, Interim Application does not survive and is accordingly disposed off.

(KAMAL KHATA, J.) (A.S. GADKARI, J.)