IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 2541 OF 2023
IN
MISCELLANEOUS PETITION NO. 286 OF 2023
WITH
IN PERSON APPLICATION (LODGING) NO. 15473 OF 2023
IN
INTERIM APPLICATION NO. 2541 OF 2023

Abha Dastane-Rao	…	Applicant/Petitioner
vs.		
Prabhakar Deolankar and others	…	Respondents

Ms. Abha Dastane-Rao, applicant/petitioner in-person.

Mr. Sharad N. Chandrachud for respondent No.1.

Mr. Hemant P. Ghadigaonkar for respondent Nos.2 and 3.

Mr. Pramod J. Pawar for respondent No.4.

Mr. Chetan Kapadia, Senior Advocate, a/w. Ms. Vidisha Rohina and Mr. Kunal Chheda for proposed respondent-Bank of Maharashtra.

CORAM	**:**	**MANISH PITALE, J.**
Reserved on	**:**	**06th DECEMBER, 2023**
Pronounced on	**:**	**12th JANUARY, 2024**

P.C. :

. By this application, the applicant (original petitioner) is seeking amendment of the miscellaneous petition to add certain pleadings, as also to modify existing prayer clauses (a) and (b). The applicant also seeks to implead Bank of Maharashtra as respondent No.5 in the petition and in that context, seeks permission to add, by way of amendment, certain pleadings with permission to place on record documents. According to the applicant, the proposed amendments are necessary and the presence of the Bank of Maharashtra is required for effective and complete adjudication of the issues raised in the petition. The proposed respondent i.e. Bank of Maharashtra was put to notice, who appeared through counsel and opposed its impleadment in the petition, claiming that it is neither a necessary nor a proper party in the petition, which concerns invocation of power of this Court under Section 301 of the Indian Succession Act, 1925 (hereinafter referred to as the Succession Act), in order to seek removal of respondent No.1 as the executor and for appointment of the applicant (original petitioner) as the administrator.

2. The applicant in the present case, has filed the miscellaneous petition invoking Section 301 of the Succession Act. On the basis of the statements made in the petition, the applicant is seeking removal of respondent No.1 as the executor of the estate of the deceased. She has also prayed for her appointment as executor to administer the estate of the deceased. It is alleged that the actions of the respondent No.1 are such that he no longer deserves to continue as the executor. Initially, the petition was filed by the petitioner alongwith her mother. But, subsequently, the mother of the petitioner expired. Respondent Nos.2 and 3 in the petition are sisters of the petitioner, who are supporting the petitioner. Respondent No.4 is Maharashtra Executor and Trustee Company Private Limited in whose favour the respondent No.1 has executed a power of attorney for exercising the powers of executorship. It is not disputed that respondent No.4 is a wholly owned company of Bank of Maharashtra.

3. In the present case, the respondent No.1 was appointed as executor of the Will executed by the father of the applicant (original petitioner) and

respondent Nos.2 and 3. The respondent No.1 applied for probate and was granted probate in a proceeding initiated before the competent Court at Pune. It is alleged that after the probate was granted, the respondent No.1, as an executor, failed to respond to the communications sent to him and in that backdrop, respondent Nos.2 and 3 filed miscellaneous applications for revocation of probate granted in favour of the respondent No.1. The said proceedings are still pending before the competent Court at Pune.

4. The applicant has stated in the miscellaneous petition that the respondent No.1 and his power of attorney holder i.e. respondent No.4 acted in a manner detrimental to the estate of the deceased. In support of the said allegation, the applicant had relied upon the events that took place in November and December, 2012. It is the case of the applicant that an interim injunction granted in the proceeding initiated for revocation of the probate, was vacated on 29.11.2012. The respondent Nos.2 and 3 filed an application for stay of the said order and on 21.12.2012, the competent Court granted stay of its own order until 15.01.2013. It is the case of the applicant in the accompanying miscellaneous petition that during the 22 days, when the interim injunction had been vacated on 29.11.2012, till the stay was granted on 21.12.2012, respondent No.1 in collusion with respondent No.4, acted in a hasty manner and disbursed the bequeath to the beneficiaries. It is alleged that cheques were issued and despite respondent Nos.1 and 4 being informed about the stay order dated 21.12.2012, stop payment request was not made and the cheques were cleared after 21.12.2012 i.e. on 22.12.2012, 24.12.2012 and 31.12.2012.

5. According to the applicant, the aforesaid conduct of the respondent Nos.1 and 4 sufficiently demonstrates that they are liable to be removed as

executors and the applicant deserves to be appointed as executor to administer the estate of the deceased.

6. The miscellaneous petition was initially dismissed by the learned Single Judge of this Court by an order dated 17.02.2016, *inter alia*, on the ground that the petitioner was claiming inconsistent reliefs, for the reason that the petitioner could not be permitted to impeach the very Will, on the basis of which, she is seeking appointment as executor of the estate of the deceased. The said order dismissing the miscellaneous petition, was challenged in appeal bearing Appeal No.332 of 2016.

7. By judgment and order dated 17.04.2023, the Division Bench of this Court set aside the order of the learned Single Judge and allowed the appeal. The miscellaneous petition was restored to file. Thereafter, the applicant (original petitioner) filed the present application seeking the aforementioned amendments. In the amendment application, the applicant has sought deletion of original petitioner No.2 i.e. the mother of the applicant, who expired during the pendency of the proceeding. The applicant desires to modify the existing prayer clauses (a) and (b). In that regard, reference is made to the aforementioned judgment and order of the Division Bench of this Court, wherein reference was made to the typographical errors in the prayer clauses, which the applicant desires to correct. Apart from this, the applicant desires to add detailed pleadings alongwith documents, in order to justify the prayer in the application for adding Bank of Maharashtra as respondent No.5 in the miscellaneous petition. The applicant also desires to add certain pleadings in the light of the report of forensic auditor submitted in the appeal proceeding, particularly in the light of the observations made by the Division Bench in

paragraph No.13 of the order dated 17.04.2023, whereby the appeal was allowed.

8. The respondent Nos.1 and 4 are opposing the prayers made in the present application. As noted hereinabove, Bank of Maharashtra was issued notice, as the applicant desired to add the Bank of Maharashtra as respondent No.5 in the miscellaneous petition alongwith addition of prayers, seeking specific directions against Bank of Maharashtra.

9. The Bank of Maharashtra appeared through counsel and opposed the amendment to the extent of it being added as a party to the miscellaneous petition. Specific objection was raised on the ground that adding Bank of Maharashtra as a respondent to the miscellaneous petition, would be wholly misplaced, as the petition invokes Section 301 of the Succession Act, concerning only the question of removal of respondent No.1 as the executor and appointment of the applicant to administer the estate of the deceased. It was claimed that the pleadings and prayers sought to be added, while seeking addition of Bank of Maharashtra as party respondent, are clearly beyond the scope of the jurisdiction of this Court under Section 301 of the Succession Act.

10. The applicant appearing in person vehemently submitted that the present application in its entirety, ought to be allowed. It was submitted that the amendment would assist this Court in properly exercising the jurisdiction and deciding the miscellaneous petition filed by the applicant. It is submitted that the typographical errors in the original prayer clauses (a) and (b) of the miscellaneous petition, deserve to be corrected, particularly in the light of the observations made by the Division Bench while allowing the appeal. It

was further submitted that the forensic report placed in the appeal proceeding and the documents as well as pleadings in that regard, ought to be incorporated in the miscellaneous petition, so as to further buttress the contentions raised on behalf of the applicant/original petitioner in support of the prayer for removal of respondent No.1 as executor.

11. It was further submitted that in the context of the prayers made in the miscellaneous petition, addition of Bank of Maharashtra as respondent No.5 was necessary for effective and complete adjudication of the issues arising in the miscellaneous petition. The said submission was made on the basis that the respondent No.4 being a wholly owned company of Bank of Maharashtra, had connived with respondent No.1 and caused loss to the estate of the deceased, thereby indicating the active involvement of Bank of Maharashtra, necessitating its addition as a respondent to the miscellaneous petition. The amendment seeks to place on record specific allegations against Bank of Maharashtra and in that context, the applicant seeks addition of specific prayer clauses b1, b2, b3 and b4 against Bank of Maharashtra. It was submitted that since the applicant proposes to seek specific reliefs and directions against Bank of Maharashtra, it would be only in the fitness of things that Bank of Maharashtra is added as a party respondent to the miscellaneous petition.

12. The applicant in person referred to the contents of the forensic report, in order to indicate the alleged wrongdoing on the part of Bank of Maharashtra with regard to the estate of the deceased and in that light, she submitted that Bank of Maharashtra and respondent No.4 alongwith the respondent No.1, need to be directed to bring back the amounts illegally disbursed, so as to make good the loss caused to the estate of the deceased.

It was submitted that such reliefs could certainly be claimed in a proceeding initiated under Section 301 of the Succession Act. The applicant in person placed specific reliance on judgment and order dated 11.10.2013 of this Court passed in Miscellaneous Petition No.66 of 2013 (**Mukesh Ramanlal Gokal and another v/s. Ashok Jagjivan Gokal and others**). According to the applicant in person, in a similar proceeding initiated for removal of executors, in the said judgment, it was indicated that the Court could exercise powers for making good the loss to the estate of the deceased. She also relied upon judgment of this Court in the case of *Vasant Narayan Sardal v/s. Ashita Tham and others* [**2018 (5) Mh.L.J. 142**].

13. On the other hand, Mr. Chetan Kapadia, learned senior counsel appearing on behalf of the proposed respondent i.e. Bank of Maharashtra submitted that this Court may pass appropriate orders on the other amendments sought by the applicant. But, insofar as Bank of Maharashtra is concerned, its impleadment and addition of prayers as also pleadings against it, cannot be permitted as the miscellaneous petition is limited to considering the question as to whether the respondent No.1 can be removed as executor under Section 301 of the Succession Act. The learned senior counsel appearing for Bank of Maharashtra invited attention of this Court to the prayers sought to be added by way of amendment i.e. proposed prayer clauses b1 to b4 and he submitted that the said prayers cannot be said to be in aid of the main prayer for removal of respondent No.1 as executor under Section 301 of the Succession Act. It was emphasized that the aforesaid amendment concerning Bank of Maharashtra, if granted, would be beyond the scope of jurisdiction of the miscellaneous petition itself, which has been filed under Section 301 of the Succession Act.

14. The learned senior counsel submitted that the proposed respondent i.e. Bank of Maharashtra had absolutely no role, other than being a bank in which the account was opened by respondent No.1 through respondent No.4, concerning the estate of the deceased. Merely because respondent No.4 happens to be a wholly owned subsidiary/company of Bank of Maharashtra, it cannot make the said bank liable for any of the actions of respondent No.4. The account pertaining to the estate of the deceased could well have been opened in any other bank and therefore, the existence of account in the Bank of Maharashtra, cannot be the basis for roping in the said bank in the present proceeding. It was emphasized that the proceeding under Section 301 of the Succession Act, is necessarily a summary proceeding to consider as to whether the executor deserves to be removed. Any further directions for making good the alleged loss caused to the estate of the deceased, can be passed only in a substantial proceeding to be initiated by a person who would be appointed for the administration of the estate of the deceased, if at all, the existing executor is removed. On this basis, it was submitted that the proposed amendment, to the extent that it concerned the Bank of Maharashtra, was wholly misplaced and it deserved to be rejected. In that context, the learned senior counsel referred to Sections 301 and 302 of the Succession Act, apart from referring to Sections 268 and 295 thereof, to indicate applicability of the Code of Civil Procedure, 1908 (CPC) to probate proceedings and contentious cases coming up for consideration before the Court. It was further submitted that the test under Order 1 Rule 10(2) of the CPC, ought to be applied to the present application. It was urged that in the facts and circumstances of the present case, Bank of Maharashtra is neither a necessary nor a proper party and its presence is certainly not necessary for effectually and completely deciding the questions involved in the miscellaneous petition. On this basis, the

learned senior counsel submitted that the amendment to that extent, deserves to be rejected.

15. It was further emphasized that in the present case, the probate was granted as far back as on 18.06.2007 and the certificate was issued on 14.12.2007. It was further submitted that Bank of Maharashtra had acted on the instructions of respondent Nos.1 and 4, with the amounts being disbursed in favour of the beneficiaries identified in the Will and it was an admitted position that the disbursal was made upon indemnity bonds being executed. On this basis, it was submitted that the proposed amendment concerning Bank of Maharashtra, ought not to be granted.

16. The learned senior counsel for Bank of Maharashtra then made reference to judgment and order dated 02.02.2018 passed in Writ Petition No.7222 of 2015 (*Dr. Subhada Mithilesh and another vs. Prabhakar Deolankar and others*) to impress upon this Court that upon the probate of the Will being granted, the immovable assets were already distributed in terms of the Will. It was submitted that in the said judgment and order, observations were made that the petitioners in the said writ petition and the applicant herein, had filed repeated proceedings, indicating that they did not want the respondent No.1-executor or respondent No.4 to function smoothly and that they were raising grievances about their non-functioning and also praying for their removal. It was submitted that the writ petition was dismissed and that this aspect also indicates that even against respondent Nos.1 and 4, the applicant would have to make good her contention that this Court needs to exercise power under Section 301 of the Succession Act, for their removal. It was submitted that in any case, Bank of Maharashtra cannot be roped into the said controversy. On the aspect of the scope of

power and jurisdiction of a Court in a testamentary suit, reliance was placed on the judgment of this Court in the case of *Rupali Mehta v/s. Tina Narinder Sain Mehta* [**2006 (6) Mh.L.J. 786**]. It was emphasized that in a testamentary suit, the Court is not entitled to make any interim order for protection of property and that such order for protection can be made only to prevent a person having no rights in relation to the property, taking forcible possession. Reliance was also placed on the judgment and order of Punjab and Haryana High Court in the case of *S. B. Ranjit Singh and another v/s. S. Santokh Singh Rais and others* (**AIR 1951 P&H 318**) in the context of jurisdiction of the Court under Section 301 of the Succession Act and also exercise of power under Order 1 Rule 10 of the CPC. By relying upon the said position of law, the learned senior counsel for the proposed respondent – Bank of Maharashtra sought rejection of the amendment to that extent.

17. Mr. Sharad N. Chandrachud, learned counsel appearing for respondent No.1 and Mr. Pramod J. Pawar, learned counsel appearing for respondent No.4, apart from supporting the contentions raised by the learned senior counsel appearing for the proposed respondent, submitted that the amendment sought in the present application, cannot be granted. It was submitted that the applicant, by way of the present application, was seeking to add material to the miscellaneous petition, which can be said to be completely foreign to the main issue being raised in the miscellaneous petition. Therefore, the learned counsel for respondent No.1 as well as respondent No.4, contended that the present application deserves to the dismissed.

18. Mr. Hemant P. Ghadigaonkar, learned counsel for respondent Nos.2 and 3 i.e. the sisters of the applicant, supported the prayers made on behalf

of the applicant. It was submitted that the application may be allowed in its entirety.

19. Having heard the learned counsel for the parties and upon perusal of the material on record, this Court finds that while some of the amendments prayed for on behalf of the applicant, can be granted, there is a serious contest by the proposed respondent - Bank of Maharashtra to the portion of the proposed amendment, whereby pleadings are sought to be inserted and prayers are sought to be made for directions against Bank of Maharashtra. The aspect of jurisdiction exercised by the Court under Section 301 of the Succession Act, is specifically raised and in that context, this Court is required to consider the present application.

20. Section 301 of the Succession Act concerns removal of executor and providing for a successor, upon the Court being satisfied that the executor deserves to be removed. In the present case, the applicant (original petitioner) has levelled allegations against respondent No.1 – executor and respondent No.4 - his power of attorney holder, to contend that the said respondents ought to be removed from executorship. The applicant has further prayed for her appointment as the administrator of the estate of the deceased. The question is whether the presence of proposed respondent – Bank of Maharashtra is required for enabling the Court to effectually and completely adjudicate upon and settle the questions arising in the petition. The aspect relevant to the petition, wherein the applicant is seeking removal of respondent Nos.1 and 4 from executorship, pertains to the allegations levelled against them and if the Court is satisfied that the allegations are actually made out, an order under Section 301 of the Succession Act, would follow. The applicant has also prayed for an interim direction for recall of

the amounts bequeathed and distributed in December 2012 and to make good the losses. These interim directions are also relevant only as against respondent Nos.1 and 4.

21. The scope of jurisdiction available with the Court while exercising power under Section 301 of the Succession Act, has to be appreciated while considering the question as to whether the proposed respondent – Bank of Maharashtra can be added as a party to the petition. The applicant in person relied upon judgments and orders passed by this Court in the case of **Mukesh Ramanlal Gokal and another v/s. Ashok Jagjivan Gokal and others** (*supra*) and in the case of **Vasant Narayan Sardal v/s. Ashita Tham and others** (*supra*). It is the case of the applicant in person that the aforementioned judgments lay down the law that while considering a proceeding under Section 301 of the Succession Act, this Court can certainly issue appropriate directions even as against the proposed respondent – Bank of Maharashtra for recovery of amounts and for making good the alleged losses caused to the estate of the deceased. On the other hand, it is contended by the learned senior counsel appearing for the said proposed respondent that even if the aforementioned judgments are to be taken into consideration, it cannot be said that this Court, while exercising jurisdiction under Section 301 of the Succession Act, can issue such directions against the proposed respondent, for the reason that the only issue for consideration before this Court is, as to whether respondent Nos.1 and 4 are to be removed from executorship.

22. In this backdrop, this Court perused the aforementioned judgments. In the case of **Mukesh Ramanlal Gokal and another v/s. Ashok Jagjivan Gokal and others** (*supra*), this Court was considering an identical prayer for

removal of executors, on the basis of allegations levelled against them. In the said proceeding, specific directions were also sought for making good the losses caused to the estate of the deceased. A similar contention pertaining to jurisdiction of the Court under Section 301 of the Succession Act, was raised and in that context, this Court observed that the proceeding in question being of summary nature and in the light of the fact that a separate suit was filed with regard to the recovery and possession of some of the properties, forming the estate of the deceased, reliefs could be granted in respect of removal of the executors. In fact, the said petition was also allowed only to the extent of removal of the executors on the basis that certain allegations against them, were made out by the petitioners therein. Thus, there is nothing in the said judgment indicating that this Court held that jurisdiction under Section 301 of the said Act, extended to issues beyond the question of removal of the executors.

23. In the case of **Vasant Narayan Sardal v/s. Ashita Tham and others** (*supra*), this Court referred to Section 301 of the Succession Act and thereafter, in paragraph No.15, proceeded to observe that the Court could certainly issue appropriate directions as a guardian and custodian of the interest that devolves in the subject Will. It was held that the Court, in such a situation, is a Court of conscience and it cannot be reduced to a helpless bystander, when the allegations against the executor are made out. Eventually, even in the said case, this Court removed the executor and appointed an officer of the Court, further issuing consequential directions. Even the aforesaid judgment does not indicate that the Court exercising power under Section 301 of the Succession Act, could proceed to issue directions to third parties, particularly when the central issue concerns removal of the executors. Therefore, the two judgments on which the

applicant in person has placed reliance, cannot come to her aid in explaining as to how the presence of the proposed respondent – Bank of Maharashtra is necessary for effectually and completely deciding the central question that arises in the petition i.e. as to whether respondent Nos.1 and 4 deserve to be removed from the executorship.

24. It is an admitted position that respondent Nos.1 and 4 are contesting the petition and this Court is yet to decide as to whether the allegations levelled by the petitioner, are made out in the summary proceedings before this Court. In this context, the role of the proposed respondent also assumes significance. There is substance in the contention raised on behalf of the proposed respondent – Bank of Maharashtra that it happened to be the bank in which the bank account pertaining to the estate of the deceased, was opened. The account may well have been opened in any other bank. There is substance in the contention that merely because respondent No.4 is a wholly owned company of Bank of Maharashtra, it cannot be said that the Bank of Maharashtra is either the power of attorney holder of the executor i.e. respondent No.1 or that it had any role to play as regards the allegations made against respondent Nos.1 and 4. The proposed respondent – Bank of Maharashtra proceeded to honour the cheques issued by respondent Nos.1 and 4. The amounts were disbursed upon taking appropriate bonds in favour of the persons named in the Will. It is undisputed that the Will was probated and that even as on today, the proceedings initiated by the applicant and respondent Nos.2 and 3 for revocation of probate, are pending.

25. In these circumstances, although the applicant is alleging connivance between the respondent Nos.1 and 4, the instructions given to proposed

respondent – Bank of Maharashtra were abided by the said bank, only as a banker. Even if the allegations levelled by the applicant in person in the petition, are accepted, the result would be that the respondent Nos.1 and 4 would be removed from executorship. If the further prayer of the applicant is accepted, she would be appointed as an executor. It is only after such contingencies happen that the applicant would be able to initiate appropriate proceedings for making good the alleged losses caused to the estate of the deceased. This Court agrees with the submission made on behalf of the proposed respondent – Bank of Maharashtra that in the present proceeding initiated by the applicant under Section 301 of the Succession Act, the only issue and central question for consideration is, as to whether respondent Nos.1 and 4 deserve to be removed from executorship and in that context, the presence of the proposed respondent – Bank of Maharashtra is not at all necessary.

26. The applicant as the petitioner in the miscellaneous petition, is making an endeavor to demonstrate that respondent Nos.1 and 4 need to be removed as executors, on the basis of certain material placed before this Court. In the process, the applicant in such a summary proceeding under Section 301 of the Succession Act, will have to demonstrate and make good her allegation that the respondent No.4, in connivance with respondent No.1, caused amounts to be disbursed on 24.12.2012 and onwards, despite the interim injunction having been restored, as the concerned Court granted stay of its own order till 15th January of the next year. If the applicant is able to prove such acts of respondent Nos.1 and 4, it will lead to an order being passed under Section 301 of the Succession Act and they will stand removed as executors. This is the scope of the petition filed by the applicant. Once this aspect is appreciated, it becomes clear that the proposed respondent –

Bank of Maharashtra is not even a proper party for deciding the questions that arise for consideration in the petition filed under Section 301 of the Succession Act. The proposed respondent – Bank of Maharashtra, as the bank in which the account exists, cleared the cheques on instructions given by respondent Nos.1 and 4. Such an act would have been undertaken by any bank in which such an account would have existed. As noted hereinabove, merely because respondent No.4 happens to be a wholly owned subsidiary of Bank of Maharashtra, it cannot *ipso facto* lead to a conclusion that respondent No.4 and the proposed respondent – Bank of Maharashtra are one and the same party or that they performed identical role in the facts and circumstances of the present case. It cannot be forgotten that respondent No.4 is a power of attorney holder of respondent No.1 i.e. the executor, while Bank of Maharashtra is simply the bank in which the account exists.

27. A perusal of the provisions of the Indian Succession Act would show that under Section 302 thereof, this Court, on an application, can give directions to the executor or the administrator, in regard to the estate or in regard to the administration of the estate, where the probate or letters of administration have been granted. In the present case, even if respondent Nos.1 and 4 are removed as executors and the petition filed by the applicant is allowed, whereby she is appointed as the administrator, the Court would then be able to issue appropriate directions. But, perusal of the proposed amendment of pleadings and the additional prayers at prayer clauses b1 to b4, sought to be added on behalf of the applicant, indicate that she is seeking such directions at this stage itself against a third party i.e. Bank of Maharashtra.

28. It is relevant that Sections 368 and 369 of the Succession Act state that when an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, including by neglecting to get any part of the property of the deceased, it is the executor or the administrator, who is liable to make good the loss. As noted hereinabove, it is only upon the petition under Section 301 of the Succession Act, filed by the applicant, first being allowed, that she would have to institute proceedings in respect of any loss or damage caused to the estate of the deceased and that too for such loss or damage being made good by the executors. There is no question of a third party like the proposed respondent – Bank of Maharashtra being roped in for seeking directions in the aforesaid petition filed under Section 301 of the Succession Act, for making prayers as proposed at prayer clauses b1 to b4. Therefore, the amendment to that extent is untenable and the contentions raised in that regard on behalf of the applicant, cannot be accepted.

29. The learned senior counsel appearing for the proposed respondent – Bank of Maharashtra referred to the judgment of the Punjab and Haryana High Court in the case of **S.B. Ranjit Singh and another Vs. S. Santokh Singh Rais and others** *(supra).* In the said case pertaining to applications filed under Section 301 of the Succession Act, when power of the Court was invoked under Order I Rule 10 of the CPC for adding a person as a party, the Court found that adding such a party and entering into the arena of making enquiry in that regard, upon the person being added as party, would necessarily require a long and complicated enquiry in order to decide complicated questions, which could not be done in a proceeding under Section 301 of the Succession Act. It was opined that a separate declaratory suit could be filed in such circumstances. This further indicates the nature of

jurisdiction under Section 301 of the Succession Act and the parameters to be applied while considering addition of third party to such proceeding.

30. In the case of **Rupali Mehta vs. Smt. Tina Narinder Sain Mehta** (*supra*) relied upon by the learned senior counsel appearing for the proposed respondent – Bank of Maharashtra, this Court considered the provisions of the Succession Act and found that the testamentary Court cannot pass interim orders, as a matter of course, for protection of property during the pendency of the suit. In the present case, the Court is concerned with a proceeding under Section 301 of the Succession Act, limited to the question as to whether the executors deserve to be removed and therefore, directions sought as per the proposed prayers against a third party, cannot be included by way of amendment.

31. The learned senior counsel appearing for the proposed respondent – Bank of Maharashtra also referred to and relied upon judgment and order passed by this Court in **Dr. Subhada Mithilesh and another vs. Prabhakar Deolankar and others** (*supra*), to contend that the writ petition filed by respondent Nos.2 and 3 i.e. the sisters of the applicant herein, challenging the refusal of a similar relief for removal of respondent Nos.1 and 4 as executors, was dismissed. It was submitted that the history of the litigation was traced in the said judgment and order and this Court found that the conduct of respondent Nos.2 and 3, which was supported by the applicant herein, indicated that they did not want the executor to function smoothly. A perusal of the said judgment and order shows that this Court had proceeded on the basis that the miscellaneous petition filed by the applicant, had been dismissed by a learned Single Judge of this Court. Emphasis was placed on the said fact while appreciating the rival contentions. But, it is an

admitted position that the judgment and order of the learned Single Judge, dismissing the petition filed under Section 301 of the Succession Act, was subsequently set aside by the Division Bench and the matter has been remanded before this Court for further consideration. In that sense, much of the force and the reasoning given in the aforesaid judgment in the case of **Dr. Subhada Mithilesh and another vs. Prabhakar Deolankar and others** (*supra*), is taken away. In any case, the effect of the said judgment may well be considered, when the petition of the applicant is taken up for consideration. The other orders referred to by the learned senior counsel appearing for the proposed respondent – Bank of Maharashtra, are also not very relevant on the same ground.

32. In any case, this Court is of the opinion that the applicant has failed to demonstrate that the proposed respondent – Bank of Maharashtra can be added as a respondent to the aforesaid petition filed under Section 301 of the Succession Act. The ambit of the said proceeding obviously concerns the aspect of removal of the executors and no relief can be sought against a third party like the proposed respondent – Bank of Maharashtra.

33. It is an admitted position that the bequeath under the Will, insofar as the immovable property is concerned, has already worked itself out. The proceedings initiated by respondent Nos.2 and 3 as well as the applicant before the competent Court at Pune for revocation of the probate, are still pending. In this situation, this Court is not inclined to favourably consider the amendment sought on behalf of the applicant to rope in a third party like the proposed respondent – Bank of Maharashtra as a party to the aforesaid petition filed under Section 301 of the Succession Act.

34. Accordingly, the application for amendment deserves to be only partly allowed. Hence, the amendment application is partly allowed in terms of prayer clause (a) and the applicant is permitted to delete the name of original petitioner No.2 from the cause title of the petition filed under Section 301 of the Succession Act, as the petitioner No.2 has expired and her legal heirs, being the applicant and respondent Nos.2 and 3, are already parties to the petition.

35. The applicant has also prayed as per prayer clause (b) for modification of existing prayer clauses (a) and (b) by adding certain words therein. A perusal of the proposed modification shows that the said amendment is sought only to clarify the relief that the applicant seeks by way of the said prayers in the petition filed under Section 301 of the Succession Act. No prejudice would be caused to the respondents, if such amendment is granted. Therefore, the amendment to that extent, as prayed in prayer clause (b) of the application, is also granted.

36. The amendment sought in terms of prayer clause (d) is innocuous and hence, it is granted.

37. Since the forensic audit report has come on record and this is also noted by the Division Bench, while disposing of the appeal filed by the applicant, the said report can be permitted to be brought on record along with the affidavit of the applicant with comments on the said forensic audit report. These documents may assist the applicant to try to make good her case for removal of respondent Nos.1 and 4 as executors. The respondent Nos.1 and 4 would be at liberty to respond to the report as well as the affidavit and comments of the applicant on the forensic audit report.

38. Hence, Exhibits JJ and KK specified in schedule A to the application, are permitted to be brought on record by way of amendment. The proposed amendment for adding documents at Exhibits LL to NN, stands rejected and also the documents proposed to be shown at serial No.45 in the index of the schedule A also cannot be permitted to be placed on record. This is because the applicant is seeking to place the documents on record to make allegations against the Bank of Maharashtra for having given lesser returns on certain securities etc., which is an issue completely foreign to the main issue raised on her behalf in the petition filed under Section 301 of the Succession Act, pertaining to alleged illegal disposal of the amounts by the executors, even when the order vacating interim injunction had been stayed by the Court at Pune. The same has nothing to do with the aforesaid documents sought to be placed on record, for which the applicant may have an independent grievance against the Bank of Maharashtra.

39. The proposed amendment shown in Schedule A to the application, to the extent of adding paragraph Nos.A to P as shown in paragraph No.4 of the proposed amendment, stands rejected. Similarly, the proposed amendment to the extent shown in paragraph No.5 for adding prayer clauses b1 to b4, also stands rejected.

40. The present application for amendment having been partly allowed to the extent indicated hereinabove, leave is granted to the applicant to carry out such amendements within a period of three weeks from today.

41. The application stands disposed of in above terms.

(MANISH PITALE, J.)