

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

**INTERIM APPLICATION (L) NO.12635 OF 2025
IN
TESTAMENTARY PETITION NO.980 OF 2013**

Gordhandas Girdhalal Mehta

]... Deceased

Gautam Gordhandas Mehta

]

aged 75 years, Hindu, of Mumbai

]

Indian inhabitant, Occupation Service,

]

residing at 52, Marble Arch, 5th Floor,

]

Dr. G. Deshmukh Marg, Peddar Road,

]

Mumbai-400 026, being Sole Surviving

]

Executor named under the

]

Will of the deceased abovenamed.

]... Applicant/Petitioner

Ms. Hrushi Narvekar a/w. Adv. Aparna Wagle for the Applicant.

CORAM : KAMAL KHATA, J.
RESERVED ON : 1st October, 2025.
PRONOUNCED ON : 15th October, 2025.

JUDGMENT:

1) By this Application filed under Section 301 of the Indian Succession Act, 1925 ('ISA'), the Applicant - who is both the sole beneficiary and the Executor to the deceased estate - seeks appointment of a new Executor on account of his advanced age, ill-health and consequent inability to discharge his duties relating to transfer and administration of the estate's assets.

2) Gordhandas Girdhalal Mehta (the deceased) passed away on 11th January 1999, leaving behind his wife Vimlaben and son - the present Applicant. The deceased left a Will dated 2nd October 1984 whereby he appointed his wife, his son, and CA Narendra Mehta as Executors with a power to appoint other persons as Executors upon demise or retirement of any of the named Executors or upon their choosing. His wife Vimlaben and his son the Applicant, were named as beneficiaries in respect of certain movable and immovable properties. The assets of the deceased are situated in Sewree, Khandala and Kolkata. The estate is valued at approximately ₹ 44 crores.

3) On 24th March 2000, Vimlaben expired intestate, leaving behind the Applicant as her only heir. The Applicant is, therefore, the sole heir and beneficiary to the estates of both his parents - Gordhandas and Vimlaben.

4) The co-Executor, C.A. Narendra Mehta expired on 30th October 2011. Consequently, the Applicant is the sole surviving Executor.

5) The Applicant, being both the sole beneficiary and Executor, filed a Testamentary Petition No.980 of 2013 for grant of Probate of the deceased's Will, which was granted in his favour on 30th November 2013. On 26th February 2025, this Court permitted

amendment of the Schedule of Property annexed to the Probate. The amended Probate was issued on 16th April 2025.

6) The present Application is necessitated as the Applicant is suffering from dilated cardiomyopathy – a heart condition – and cervical myelopathy affecting the cervical spine and neck (supported by medical certificates), rendering him unable to administer the estate effectively. The Applicant therefore seeks appointment of his daughter-in-law, Mrs. Natasha Sabharwal, as the new Executor, for which she has furnished her written consent.

7) Mr. Narvekar, learned Counsel for the Applicant, submits that, under Section 301 of the ISA, this Court is empowered to remove an Executor and appoint another in his place. He submits that no prejudice will be caused to any person since the Applicant is himself the sole beneficiary of the deceased's estate. His inability to personally travel to Sewree, Khandala and Kolkata to effect transfer the assets to himself, is detrimental to his own interest and frustrates the intention of the testator.

8) In *Abha Dastane Rao & Ors. v/s. Prabhakar Devlamkar & Ors*¹, *Swapnil Gupta v/s. Govt. of NCT of Delhi*² and *Marten Borchert v/s. Arzan Khambatta*³ the Courts have held that inability to discharge duties on account of ill-health constitutes sufficient ground

¹ (2016) SCC Online Bom 110.

² (2022) SCC Online Del 4580.

³ (2011) 5 MhLJ 682.

for removal or substitution of an executor. The principles laid down in these decisions squarely apply to the present case. In any event, no prejudice is caused to any person since the Applicant alone is entitled to the estate of the deceased.

9) Having considered the Application and submissions advanced, I find merit in the contentions of Mr. Narvekar.

10) In *Abha Dastane Rao (Supra)*, this Court has observed that the use of the word “may” in Section 301 indicates that the High Court's power is discretionary.

11) Considering the principles laid down in the above decisions and taking an overall view of the matter, I find the present Application to be straightforward, with no controversy or competing interests involved.

12) The sole beneficiary of the deceased estate seeks substitution of himself as Executor due to ill-health and inability to perform his duties. I find no impediment in granting the relief sought, particularly since no other person has any locus or can have any objection – the matter concerns only the Applicant’s own interest and effectuates the testator’s intent. The Applicant’s daughter – in – law has consented to accept the Executorship. There is thus no reason to withhold the relief sought.

13) Accordingly, the Interim Application is allowed in terms of prayer clauses (a) and (b).

(KAMAL KHATA, J.)

Cases Referred:

1. *Abha Dastane Rao & Ors. v/s. Prabhakar Devlamkar & Ors (2016) SCC Online Bom 110.*
2. *Swapnil Gupta v/s. Govt. of NCT of Delhi (2022) SCC Online Del 4580.*
3. *Marten Borchert v/s. Arzan Khambatta (2011) 5 MhLJ 682.*