

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 1121 of 2012 (O&M)
Date of Decision : 17.08.2015.**

Bachan Kaur

...Appellant

Versus

Sarabjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sarju Puri, Advocate for the appellant.

K. Kannan, J.(Oral)

CM No. 3014-C of 2012

For the reasons stated in the application, delay in re-filing the appeal is condoned.

Application stands disposed of.

RSA No. 1121 of 2012

The mother, who was a nominee to the benefits of the deceased employee in Govt. service was the mother and she claimed, as such, to the exclusion of his wife. The justification pleaded for exclusion was that the deceased son had pending litigation seeking for divorce in a matrimonial Court and the petition stood abated on his death before the conclusion of the proceedings. The petition for divorce according to the counsel appearing on behalf of the mother nominee is that the petition must be treated as operating as a Will and the nomination must

be taken as an expression of intent that he did not want his estranged wife to be treated as an heir at law.

I must observe that the argument is far fetched and legally untenable. No person can wish away the incidence of succession contrary to law. The only way such a disposition is possible is through an instrument of the Will that ought to satisfy the legal requirement of Section 63 of the Indian Succession Act. The mother must be thankful that she has been granted 100% amount of death-cum-retirement gratuity. I do not express my mind upon such a direction but I will hold that the mother is not competent to seek for any exclusion of the benefits accruing to the deceased son from going to a legally wedded wife irrespective of whether they lived in harmony or not. I decline to make any intervention and dismiss the appeal as not involving any substantial question of law to be considered in favour of the appellant. Second appeal is dismissed.

August 17, 2015.
kanchan

(K. KANNAN)
JUDGE