

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 67 of 2019****Reserved on 31.01.2020****Pronounced on 18.02.2020**

- Nazim Ansari S/o Late Faku Miyan Aged About 50 Years R/o Village Batwahi, Police Station And Tahsil Lundra, District Surguja Chhattisgarh.

---- Applicant**Versus**

1. Umesh Kumar Minj S/o Late Shri Alfred Minj Aged About 35 Years R/o Village Sayarra, Post Raghunathpur, Tahsil Lundra, District Surguja Chhattisgarh.
2. Vinod Minj S/o Late Shri Alfred Minj Aged About 52 Years R/o Village Sayarra, Post Raghunathpur, Tahsil Lundra, District Surguja Chhattisgarh.
3. Jeevan Minj S/o Late Shri Alfred Minj Aged About 44 Years R/o Village Sayarra, Post Raghunathpur, Tahsil Lundra, District Surguja Chhattisgarh.
4. Manoranjani Minj W/o Abhaydan Lakara R/o Village Sayarra, Post Raghunathpur, Tahsil Lundra, District Surguja Chhattisgarh.
5. Taramani Minj S/o Late Shri Alfred Minj R/o Village Sayarra, Post Raghunathpur, Tahsil Lundra, District Surguja Chhattisgarh.

---- Non-applicants

For Applicant:	Shri Sumit Singh Rathore, Advocate along with Smt. Soni Mishra, Advocate.
For Non-applicants:	Shri Jitendra Shrivastava, Advocate along with Shri Hariom Rai, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Order/Judgment**

1. This Revision Petition has been preferred by Non-applicant No.1 Nazim Ansari under Section 384(3) of the Indian Succession Act, 1925 ((hereinafter referred to as 'the Act, 1925') questioning the legality and propriety of the order dated 17.07.2019 passed by the District Judge Ambikapur (C.G.) in Miscellaneous Civil Appeal No.35/2018, whereby the

learned District Judge while affirming the order dated 11.09.2018 passed by the First Civil Judge, Class I, Ambikapur has dismissed the appeal. The parties to this petition shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated the facts of the case are that one Dayamani Minj, who was working as a Headmaster in Government Primary Girl's School, Batwahi Region, South Dhorpur, died in harness on 30.11.2011.

3. On account of the death of said Dayamani Minj, her brother Umesh Kumar Minj (Original Applicant), being her nominee, approached the District Education Officer, Ambikapur for obtaining the gratuity amount, leave encashment amount and for the amount of life insurance in the nature of death benefits of his deceased sister, where a dispute was raised by Non-applicant No.1 Nazim Ansari. Owing to which, he was directed by the said District Education Officer to produce the succession certificate. The Applicant (Umesh Kumar Minj) was, therefore, constrained to move an application for grant of succession certificate under Section 372 of the Act, 1925 in respect of the deceased gratuity amount of Rs.4,30,836/-, leave encashment of Rs.2,46,192/- and for life insurance fund of Rs.1,50,000/-. It is pleaded in the application that his deceased sister during her lifetime had declared him as her nominee, and therefore, he is entitled to get the succession certificate.

4. The aforesaid claim was accepted by his brothers and sister, who were impleaded as Non-applicants No.2 to 5, while Non-applicant No.1 Nazim Ansari, while disputing the claim, has submitted a counterclaim seeking grant of succession certificate by submitting *inter alia* that since the deceased was his wife, therefore, he alone was entitled to get the

certificate as such.

5. Both the parties have led their oral and documentary evidence with regard to their respective claims and the trial Court, after considering their evidence extensively, arrived at a conclusion that Applicant Umesh Kumar Minj was a nominee of deceased Dayamani Minj by placing its reliance upon the declaration forms marked as Ex.P.1C to Ex. P.3C. It held further by disbelieving *Nikahnama* (Ex.D.10) and receipt (Ex.D.11) of it that said Nazim Ansari is not her husband. In consequence, the trial Court, while dismissing the counterclaim, has granted the Applicant (Umesh Kumar Minj) and his siblings the succession certificate entitling them to one-fifth share each over the aforesaid amount.

6. The aforesaid finding has been affirmed further by the lower appellate Court vide order impugned dated 17.07.2019 in an appeal preferred by Non-applicant No.1 under Section 388 of the Act, 1925.

7. Being aggrieved, Non-applicant No.1 (Nazim Ansari) has preferred this revision petition. Shri Rathore appearing along with Smt. Soni Mishra, learned counsel for Non-applicant No.1(Nazim Ansari) submits that the Courts below, while disbelieving the *Nikahnama* (Ex.D.10), has erred in granting the succession certificate to the Applicant Umesh Kumar Minj by placing its reliance upon the declaration forms (Ex.P.1C to Ex.P.3C) holding that he (Umesh Kumar Minj) is the nominee of deceased Dayamani Minj. It is contended further that the Courts below, without considering the alleged *Nikahnama* (Ex.D.10) in its proper perspective, have erred in dismissing his counterclaim.

8. On the other hand, learned counsel appearing for the Non-applicants has supported the order impugned.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. Admittedly, deceased Dayamani Minj was working as a Headmaster in Government Primary Girl's School, Batvahi Region, South Dhorpur. She died in harness on 30.11.2011. A claim for issuance of succession certificate with regard to the aforesaid amount has been made by her brother Umesh Kumar Minj (Original Applicant) claiming himself to be the nominee of the deceased. His assertion as such was not disputed by his brothers and sister. His claim was, however, disputed by revisionist (Nazim Ansari) by setting up of his right as husband of the deceased Dayamani Minj. The Applicant Umesh Kumar Minj has, thus, based his claim upon the declaration forms (Ex.P.1C to Ex.P.3C) while revisionist Nazim Ansari upon the *Nikahnama* (Ex.D.10).

11. From perusal of the documentary evidence like "Nomination Form of Family Benefit Fund" (Ex.P.1C), "Nomination For Benefits under the M.P. Government Employees Group Insurance Scheme" (Ex.P.2C) and "Subscriber's Nomination :G. Provident Fund" (Ex.P.3C), all executed on 13.03.1999 by said Dayamani Minj revealing the fact that she had declared her brother Umesh Kumar Minj as her nominee and was duly corroborated by one Shyam Lal Singh (AW2), the junior Auditor of the concerned District Education Department, Ambikapur, District Surguja. It, thus, appears that said Umesh Kumar Minj was a nominee of his deceased sister Dayamani Minj and the Courts below have, thus, not committed any illegality in holding as such.

12. As far as *Nikahnama* (Ex.D.10), based upon which the revisionist Nazim Ansari is trying to set up his claim, is concerned, it appears from a

bare perusal of it that said Nazim Ansari was got married with one Nazma Khatoon @ Dayamani Minj. However, I do not find any cogent and reliable evidence on record so as to hold that deceased Dayamani Minj was also known as Nazma Khatoon as depicted in the said document (Ex.D.10). Even the particulars of the bride and groom were not mentioned in the receipt (Ex.D.11) of *Nikahnama*. That apart, it has not been pleaded by the revisionist Nazim Ansari in his written statement that deceased Dayamani Minj was also known as Nazma Khatoon. It appears further that alleged *Nikahnama* was executed in 1991 and despite of that, it has not been pleaded in the written statement that she was also known as Nazma Khatoon. Besides, no documentary evidence was placed on record after the execution of the alleged *Nikahnama* that deceased Dayamani Minj was also known as Nazma Khatoon. In such circumstances, it is difficult to uphold the validity of the alleged *Nikahnama* based upon which the revisionist Nazim Ansari has tried to set up his claim. The Courts below have, therefore, not committed any illegality in disbelieving the said document and the finding, so recorded based upon due and proper appreciation of the evidence led by the parties, deserves to be and is hereby affirmed.

13. Before parting with the matter, it is to be observed that the proceeding initiated under the Act, 1925, is a summary in nature and, therefore, not the conclusive proof of the status of said Nazim Ansari. As such, the status of him whether he was the husband of deceased Dayamani Minj or not has not been decided finally here. He may still prosecute his own remedy for establishing his own status independently of these proceedings.

14. With the aforesaid observations, I do not find any substance in this revision petition. The petition is, accordingly, dismissed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita