

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :28/07/2021

Order passed on :12/08/2021

WP227 No. 1046 of 2018

- Reshma Khan W/o Late Jani Khan, Aged About 26 Years, R/o Bhatgaon Colliery, Ward No. 10, Near Maszid, Surajpur, District Surajpur Chhattisgarh Present Address: Kapoor Dafai, Chhota Bazar, Chirimiri, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Petitioner

Versus

1. Personnel Manager, S.E.C.L., Kalyani Sub-Area, Navapara Mines Bhatgaon, District Surajpur Chhattisgarh, District : Surajpur, Chhattisgarh
2. Branch Manager, Indian Life Insurance Corporation, Branch Surajpur, District Surajpur, District : Surajpur, Chhattisgarh
3. Rasida Bibi @ Ulekha, W/o Harun Khan, Aged About 55 Years, R/o Bhatgaon, P.S. Bhatgaon, District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh
4. Safi Ahmad Khan @ Chintu, S/o Late Harun Khan, Aged About 24 Years, R/o Bhatgaon, District Surajpur, District : Surajpur, Chhattisgarh
5. Rafi Ahmad Khan @ Mintu, S/o Late Harun Khan, Aged About 24 Years, R/o Bhatgaon, District Surajpur, Chhattisgarh, District : Surajpur, Chhattisgarh
6. Regional Commissioner, Provident Fund Office, Gupteshwar, Jabalpur (Madhya Pradesh), District : Jabalpur, Madhya Pradesh
7. Gulshan Aara, D/o Late Harun Khan, Aged About 33 Years, Present Address Bartunga Colony, Bartunga Hill, Chirimiri Colliery, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Respondents

For Petitioner – Ms. Meena Shastri, Advocate.

For Respondent No.1 – Mr. Sudhir Kumar Bajpai, Advocate.

For Respondent No.2 – Mr. Mukesh Sharma, Advocate.

For Respondent No.3, 4, 5 and 7– Mr. Surfaraj Khan, Advocate.

For Respondent No.6 – Mr. R.R. Sinha, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

12-08-2021

Heard.

1. This petition has been brought challenging the order in Succession civil

appeal No.4A/2017 dated 24-09-2018 by which the appeal filed by the petitioner was partly allowed. The order of the Court of Civil Judge Class I Surajpur in Succession Case No.4/2011 dated 30-11-2016 was set aside and the case was remanded to the Court below with directions.

2. The petitioner had filed a Succession Case No.4/2011, pleading that she was married wife of deceased Jani Khan who was employee in the SECL. Therefore, she prayed for grant of succession certificate to receive the benefits from the department under which the deceased was employed. The private respondents contested this application and submitted that the petitioner was divorced by Jani Khan and on the basis of nomination in favour of the private respondents they opposed the application for grant of succession certificate. Learned Civil Judge Class-I Surajpur passed the order dated 30-11-2016 and dismissed the application of the petitioner. The petitioner then preferred the appeal before the Court of District Judge which was registered as Civil Appeal No.4A/2017. The appellate Court has by the impugned order set aside the order of the Civil Judge Class-I directing the Court below to frame the issue on the pleading of divorce of the petitioner by the private respondents, make an enquiry and pass order in accordance with law.

3. Learned counsel for the petitioner submits that learned appellate Court has in a manner granted liberty to the private respondents to collect evidence in their favour. The question of the divorce could not have been dealt and decided in a succession case. The claim of the respondents that they are nominee and successor of deceased Jani Khan does not give them any entitlement over the service benefits of the deceased. They shall be regarded only as the custodian of the same. Reliance has been placed on the judgment of this Court in **Chhotu Dewangan and another vs Smt. Urmilabai and others**, 2007 (1) C.G.L.J. 56. It is submitted that proceeding under Section 372 of the Indian Succession Act, 1925 (in short 'the Act, 1925') is summery

proceeding. For declaration of right of the nominee, a civil suit was required to be filed. Therefore, issuance of succession certificate in favour of petitioner should have been ordered.

Reliance has also been placed on the judgment of Hon'ble the Supreme Court in the matter of **Smt. Sarbati v. Usha Devi**, AIR 1984 SC 346, in which it was held that bare nomination in favour of a person does not confer any beneficial interest with respect to the amount payable under life insurance policy on the death of the insured. The amount so received can be claimed by the heirs of the assured in accordance with law of succession.

Reliance has also been placed upon the judgment of Hon'ble the Supreme Court in the matter of **Kattukandi Edathil Krishnan and another Vs. Kattukandi Edathil Valasan and others**, (2006) 9 SCC 166 on the point of remand of case granting opportunities to the parties to make additional pleadings and adduce additional evidence was whether a necessity, should be considered.

It is submitted that the impugned order is not sustainable. The petitioner has entitlement for grant of succession certificate in her favour. Therefore, the impugned order be set aside and the petitioner be granted succession certificate.

4. Learned counsel for the respondents No.1 and 2 made formal objection and it is submitted that they shall comply with the order passed by this Court.

5. Learned counsel for the respondents No.3, 4, 5 and 7 opposed the submissions made by the petitioner counsel and submits that the proceeding under Section 372 of the Indian Succession Act is summary proceeding. The Court cannot determine the entitlement of a party in such a proceeding except for the party being a successor in accordance with the provisions under the Indian Succession Act. It is clear that the petitioner is not a nominee in the

service record of deceased Jani Khan, therefore, no error has been committed by the Court of Civil Judge Class-I in rejecting the application of the petitioner. The question of maintainability of this petition is also raised on the ground that Under Section 388 of the Act, 1925 clearly provides that a civil revision shall be maintainable against the order passed by the District Judge in appeal.

Reliance has been placed on the judgment of the Division Bench of Calcutta High Court in the matter of **Gita Das and another Vs. Sefali Lata Das**, AIR 2018 CALCUTTA 80, in which it has been held that such an order which is passed in appeal by the District Judge is revisable under Section 388 of the Act, 1925. Therefore, the present petition filed is not maintainable which may be dismissed.

6. In reply it is submitted by learned counsel for the petitioner that there is no specific provision under the Act, 1925 for preferring revision against the appellate order passed under Section 384 of the Act, 1925, therefore, the petition under Article 227 of the Constitution of India is maintainable.

7. Heard learned counsel for the parties and perused the documents.

8. The question of maintainability of this petition has to be decided first. Sub-section 2 and 3 of Section 388 of the Indian Succession Act, 1925 are relevant which are as under:-

“384. Appeal.—

(1) xxxxxx xxxxxx

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.”

9. According to the provision mentioned herein the District Judge has exercised the power of appellate authority. Therefore, according to Sub-section 3 of Section 388 of the Act, 1925, the order passed by District Judge was

subject to provision as to reference or revision before the High Court. Subsequent to which, the order would be regarded as final. This provision clearly provides for filing of revision petition. The reliance of the petitioner in **Chhotu Dewangan and another vs Smt. Urmilabai and others** (supra) is also a decision on civil revision, before the High Court. As for the reason that there is statutory remedy available to the petitioner by way of filing a revision petition against the impugned order, this petition under Article 227 of the Constitution of India cannot be regarded as maintainable. Hence, this petition is dismissed and disposed off on the ground that it is not maintainable under Article 227 of the Constitution of India. The petitioner has liberty to file civil revision against the impugned order.

The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge