

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 88 OF 2019

Jaya d/o Ganpatrao Ningule	... Applicant
Versus	
Shobha wd/o Pravin Ningule	... Respondent
....	
Mr. S. S. Manale, Advocate for the applicant	
Mr. S. A. Ambad, Advocate for the respondent	
....	

**WITH
CIVIL REVISION APPLICATION NO. 14 OF 2020**

Shobha wd/o Pravin Ningule	... Applicant
Versus	
Jaya d/o Ganpatrao Ningule	... Respondent
....	
Mr. S. A. Ambad, Advocate for the applicant	
Mr. S. S. Manale, Advocate for the respondent	
....	

CORAM : R. G. AVACHAT, J.

DATED : 11th FEBRUARY, 2021

PER COURT :-

1. Heard.

2. Both these revision applications are decided by common order, since judgment and orders challenged therein are one and the same. For the sake of convenience, the facts and parties in Civil

Revision Application No.14 of 2020, are referred to.

3. The applicant herein is the widow of late Pravin Ningule, who died on 17.02.2014. Pravin was employed as a Clerk with Maharashtra State Electricity Distribution Company Limited (MSEDCL), at Kaij. On his demise, the applicant applied for heirship certificate under the Bombay Regulation, 1827. It was Miscellaneous Civil Application No.19 of 2014. The respondent is the sister of deceased Pravin. She appeared in the said application and raised objection. The application was therefore transferred to the Court of Civil Judge, Senior Division (C.J.S.D.), Ambajogai. It was renumbered as Miscellaneous Civil Application No.144 of 2014. The learned C.J.S.D. Ambajogai, by his judgment and order dated 06.11.2015, rejected the application on the ground that there being a complicated issue of fact and law involved in the said application.

Both, the applicant and the respondent challenged the said order by preferring two separate appeals, being Regular Civil Appeal Nos.86 of 2015 and Regular Civil Appeal No.2 of 2016. The learned District Judge, Ambajogai, by his common judgment and order dated 28.07.2017, dismissed both the appeals on the same ground i.e. the application for grant of heirship certificate involved a

complicated issue of fact and law. It would therefore be desirable to direct the parties to opt for a remedy of civil suit. These two orders are under challenge in these revision applications.

4. Shri Manale, learned Advocate would submit that relations between deceased Pravin and his widow Shobha, were not cordial. Late Pravin has executed will in favour of the respondent, his real sister, bequeathing all his immovable property. Moreover, Pravin nominated the respondent to receive all his service benefits, such as, provident fund amount, gratuity etc. The respondent being sister of the deceased is entitled to appointment on compassionate ground, since in the term "*family*" an unmarried sister has been included. According to the learned Advocate, heirship certificate, therefore, needs to be issued in the name of the respondent, sister of the deceased. He has relied on the following authorities:

- (i) Aparna Narendra Zambre and another vs. Assistant Superintendent Engineer, Sangli and others – 2011(5) Mh.L.J.
- (ii) State of Madhya Pradesh & ors. vs. Amit Shrivastava – (2020)10 SCC 496.
- (iii) Indian Bank and others vs. Promila and Another – 2020 DGLS(SC)16.
- (iv) Shipra Sengupta vs. Mridul Sengupta & ors – 2009

DGLS(SC)1224.

5. Learned Advocate for the applicant would on the other hand submit that, admittedly, the applicant is widow of the deceased. She would, therefore, be preferred over a Class-II heir for grant of heirship certificate. A mere nomination doesn't entitle the nominee to receive the amount in his own right as a nominee. The respondent's nomination would therefore be of no avail for her to receive monetary service benefits and even appointment on compassionate ground.

6. Perused the impugned orders. I am not in agreement with the reasons given by both the Courts below for rejecting the application and the appeal, as well. In my view, no complicated issue of fact and/or law is involved.

7. Late Pravin was serving with MSEDCL as a Clerk. He had married the applicant. Marital relationship between the two did subsist while Pravin breathed his last on 17.02.2014. The applicant is thus a widow of the deceased Pravin. Parties are governed by Hindu Succession Act, 1956. She is Class-I heir of the deceased Pravin. The deceased was the real brother of the respondent – Jaya.

Respondent was unmarried when Pravin died. The respondent being sister of the deceased, falls in the category of Class-II heir. The property of a male dying intestate devolves firstly upon the heirs, being the relatives specified in Clause-I of the schedule. If there is no heir of Class-I, then upon the heirs being the relatives specified in Clause-II of the schedule. The applicant being the widow of the deceased, would therefore alone be entitled to receive whatever estate, movable and immovable, is left behind by the deceased. Here, late Pravin is said to have executed a will bequeathing his immovable properties to the respondent, his sister - Jaya.

The applicant has simply preferred application for grant of heirship certificate in recognition of her status as widow of deceased Pravin. The learned C.J.S.D. ought to have granted certificate in her favour.

8. The applicant being widow of the deceased, would alone be entitled to receive family pension, if any, and other monetary service benefits, subject to the relevant service rules.

9. True, the respondent – sister has been nominated by the deceased, to receive provident fund amount, gratuity etc. According to the learned Advocate for the respondent, in view of the judgment

of the Apex Court in the case of *Shipra Sengupta* (supra), the nominee is entitled to receive the amount, but the amount so received is to be distributed according to the law of succession.

10. I have carefully perused the said judgment to find that the nominee in the said case was none other than the mother of the deceased. The facts of the present case are distinguishable. The respondent - sister is a nominee. She is not entitled to receive the amount as a heir of deceased. Relations between the applicant and the respondent are not good. The MSEDCL would therefore, do well to release monetary benefits and family pension in favour of the applicant.

11. So far as the claim for appointment on compassionate ground is concerned, it is to be stated that in the proceedings for grant of heirship certificate, such entitlement cannot be decided. Claim for compassionate appointment would be governed by rules and regulations framed by the MSEDCL in that regard. Learned Advocate for the respondent has brought to my notice definition of the term "*family*" given in recruitment regulation 38 and the scheme framed by the MSEDCL as regards grant of employment on compassionate ground. As per Clause-5 of the said scheme the term

“*family*” includes wife of the deceased employee, sons, unmarried daughters and dependent unmarried brothers and sisters. According to the learned Advocate, the respondent was unmarried when Pravin breathed his last. She is, therefore, covered by the definition of the term “*family*”. He has also relied on the judgment in the case of ***Aparna Narendra Zambre*** (supra) to contend that whether married sister is to be excluded for grant of compassionate appointment being disqualified as a married sister would be examined with reference to the date of making of application and not with reference to date of selection. Marrying subsequently is not a disqualification.

True, the respondent-sister was unmarried when Pravin breathed his last. She could therefore be considered to be one of the members of the family of the deceased, for grant of compassionate appointment. This is a call that needs to be taken by MSEDCL. It is for the authorities to decide who is to be preferred, widow or sister of the deceased.

12. For the reasons stated herein above, both the orders impugned herein are set aside. The Miscellaneous Civil Application No. 19 of 2014 preferred by the applicant widow of the deceased is allowed. The learned Civil Judge, Senior Division, Ambajogai, shall

grant the applicant – Shobha, heirship certificate in recognition of her status as a widow of late Pravin Ningule.

13. Both the Civil Revision Applications are disposed of.

[R. G. AVACHAT, J.]

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