

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.3853/2021

Sau. Shila and another V Bhagyashree @ sonu and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. H.S. Chitaley, Adv. for petitioners.
Mr. A.S. Dhore, Adv. for resp. no.1.
Ms. T. Khan, AGP for resp. no.2.
Mrs. U.A. Patil, Adv. for resp. no.3.

CORAM : AVINASH G GHAROTE, J.
DATE : 24-01-2023

The petition challenges the order dated 22-11-2019, passed by the learned trial Court below exh-5, whereby the application for grant of temporary injunction was partly allowed by restraining the respondent no.2/ Insurance Company from disbursing the amount payable against the two life insurance policies in favour of defendant no.1 to her during the pendency of the suit. In Appeal by the judgment dated 16-03-21, while partly allowing the appeal, the learned appellate Court has maintained the order as passed by the trial Court restraining defendant no.2 from disbursing the amounts payable under the life insurance policies to the defendant no.1. However, defendant no.3, the employer of the deceased Nagesh, has also been restrained from disbursing 50% of the amount of gratuity and other payable amount of the service benefit of the deceased Nagesh to the defendant no.1/respondent no.1 till the decision of the suit, thereby indicating that it

was permissible for defendant no.1 to withdraw 50% of the gratuity and other amounts payable on account of the service benefits of the deceased Nagesh.

2. Mr. Chitale, learned Counsel for the petitioner/ original plaintiff submits, that since the relationship of defendant no.1 with the deceased Nagesh was not proved, it was impermissible for the learned appellate Court to have permitted withdrawal of 50% of the gratuity and other service benefits of the deceased Nagesh to defendant no.1 till the decision of the suit. He submits that till the such time the suit is decided, it would be appropriate that the entire amount to be deposited in a interest carrying account which then can be disbursed as per the final result in the suit.

3. A categorical finding on a prima facie basis has been rendered that the defendant no. 1, is the nominee of the deceased Nagesh, and therefore, is entitled to claim 50% of the service benefits. The question regarding the marital status, of the defendant no. 1, would be decided, during the course of the trial, however, since the record indicates, that she is the nominee, and has been nominated by the deceased Nagesh to have the benefits of his employment in case he is no more, that is one position, which has rightly been considered by the appellate Court while passing the impugned order. It is not a case as if the entire service benefits of the deceased Nagesh, have been granted to the defendant/respondent no.1 and what has been granted would be 50% of the amount of gratuity and

other benefits. I am, therefore, not inclined to interfere in the impugned judgment.

4. At this stage, Mr Dhore, learned Counsel for the defendant/respondent no.1 categorically admits, that the relation between the deceased Nagesh, the son of the petitioner/plaintiff, of they being the parents of deceased Nagesh is not disputed by respondent no.1, which undisputed position would indicate that the petitioner/plaintiff would be entitled to the balance 50% of the gratuity and other benefits payable on account of the service benefits of the deceased Nagesh.

5. This being the position, I do not see any reason to interfere in the impugned judgment passed by the learned appellate Court. Petition is, therefore, dismissed. No costs.

JUDGE