

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16975 OF 2025

Samarth Rajendra DighePetitioner

Versus

The State of Maharashtra and Ors.Respondents

Mr. Shrirang Katneshwarkar a/w. Mr. Sandeep Gupta for the
Petitioner.

Ms. Priyanka Chavan, AGP for Respondent Nos.1 to 5.

CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.

DATE : 15th DECEMBER, 2025

P.C. :-

1. After hearing the learned Advocate for the Petitioner for quite some time, we find from his submissions that the Petitioner is born from the relationship of a woman, Smita, with the deceased, Rajendra. From the first marriage, the deceased has a daughter. From the relationship between Smita and Rajendra, the Petitioner is born, who is presently 16 years of age.

2. The learned Advocate for the Petitioner relies upon the Full Bench judgment of this Court in *Kamalbai W/o Venkatrao*

*Nipanikar v/s. The State of Maharashtra and Ors.*¹ to contend that though the first wife of the deceased is alive and is drawing the full pension, the Petitioner, who is a son born out of the illegitimate relationship between Rajendra and Smita, would have a share in the pension. He further relies upon *Rameshwari Devi v/s. State of Bihar and Ors.*²

3. We find from paragraph nos.3, 5 to 8 and 13 to 15, of *Rameshwari Devi* (supra), that the deceased husband of Rameshwari Devi, namely Narain Lal, who died in 1987, had married Yogmaya Devi on 10th April, 1963. Since then, till his demise in 1987, he lived continuously only with Yogmaya Devi. He had four children from the said relationship. On these premises, the Hon'ble Supreme Court concluded that as he was living with Yogmaya Devi for almost three decades, the presumption of husband and wife can be drawn.

4. The learned Advocate for the Petitioner submits that no pleadings have been set out in this Petition as to whether the

¹ 2019 LAB. I.C. 2566

² (2000) 2 SCC 431

deceased Rajendra was residing only with Smita from 30th April, 2008, or whether his relationship with Smita was purely extra-marital and he continued to reside with Nirmala until his demise.

5. The Petitioner shall file an additional affidavit to make a statement in the light of the above. The affidavit shall be filed on or before 9th January, 2026.

6. Considering *Rameshwari Devi* (supra), if Smita was the lady who resided with the deceased Rajendra ever since his purported marriage with her, until his demise, thereby giving up Nirmala, we could consider the span of relationship between the two. If Nirmala was residing with the deceased till he passed away, *Rameshwari Devi* (supra) would be of no assistance to the present Petitioner. At the same time, we need to verify whether the employer of the deceased Rajendra can indicate from the service record as to whether he had nominated Smita or Nirmala, as his nominee for the pension and gratuity benefits.

7. It is only for the above purpose that we are **issuing notice to the Respondents**, returnable on **22nd January, 2026**.

Considering the conspectus of the matter, this Petition would be listed in the “**urgent supplementary board**”.

8. The learned AGP waives service of notice on behalf of Respondent Nos.1 to 5.

9. Besides service of Court notice, the Petitioner is at liberty to serve Respondent Nos.6 and 7, by all permissible modes of service.

10. Office objections, if any, to be removed, on or before 8th January 2026, failing which, this Petition shall stand dismissed without reference to the Court, on 9th January, 2026.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)