



Judgment

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

CIVIL REVISION APPLICATION NO.80 OF 2023

1. Laxmikant Gopalkrishna Shivhare,
aged about 59 years, occupation auto driver.

2. Abhishek Laxmikant Shivhare,
aged about 23 years, occupation student.
Both 1 and 2 r/o plot No.17, Sharma Layout,
Gopal Nagar, Nagpur 440 022.
Mob. No.9028061181.

..... **Applicants.**

:: VERSUS ::

1. Shriram Gopalkrishna Shivhare,
aged about 61 years, occupation retired,
r/o r/o plot No.17, Sharma Layout,
Gopal Nagar, Nagpur 440 022.

2. Santosh w/o Prakash Pethe,
(Santosh d/o Gopalkrishna Shivhare)
aged about 52 years, occupation : housewife,
r/o Anand Nagar, Near Jijamata School,
tahsil Morshi, district Amravati. **Non-applicants.**

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Shri R.D.Bhuibhar, Counsel for Applicants.

Shri Abhishek S.Shukla with Shri Suresh G.Shukla,
Advocates for Non-applicant No.1.

Shri P.S.Gawai, Counsel for Non-applicant No.2.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 22/01/2025

PRONOUNCED ON : 11/02/2025

JUDGMENT

1. By invoking the jurisdiction under Section 115 of the Code of Civil Procedure, the applicants challenge the judgment and order by which the judgment and order passed by learned Civil Judge Senior Division, Nagpur is modified and held that the applicants, non-applicant Nos.1 and 2 are entitled to claim 1/3rd share each in the amounts of Rs.10,91,163/-, Rs.3,60,000/- and Rs.60,993.60 total amounting to Rs.15,12,156.60 left behind by deceased Shail Shivhare. By this order, direction was also issued to issue the succession certificate in favour of the applicants and non-applicant Nos.1 and 2.

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2. Brief facts which are necessary for disposal of the revision, are as under:

Applicant No.1 in this application namely Laxmikant Gopalkrishna Shivhare and non-applicant No.1 Shriram Gopalkrishna Shivhare are the brothers of deceased Shail who died on 6.5.2013. Applicant No.2 is the son of applicant No.1 namely Abhishek Laxmikant Shivhare and non-applicant No.2 is the sister of deceased Shail. Non-applicant No.1 filed an application for Succession Certificate contending that he and applicant No.1 and non-applicant No.2 are issues of late Gopalkrishna Shivhare. Deceased Ramkrushna was issueless. Deceased Shail was brought up by said Ramkrushna and, therefore, her name was also shown as Shail Ramkrushna Shivhare. Said Ramkrushna was recorded as her guardian. Deceased Shail was serving in Nagpur Municipal Corporation (NMC) in Library

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Department till retirement i.e. till 31.3.2013. Though she was brought up by Ramkrushna, her name was shown as Shail Gopalkrushan Shivhare. Sister of the applicants and non-applicant Nos.1 and 2 i.e. the deceased had received retiral benefits from the NMC, out of which she has deposited Rs.3,60,000/- on 13.4.2013 in the postal department. The said amount was deposited by her by transferring from her account bearing No.10075948498. She was also holding another account bearing No.20155145021 in the State Bank of India, Gopalnagar. The said account was joint account with Abhishek Laxmikant Shivhare. It is alleged that on the death of Shail, amounts of Rs.45000/- and Rs.45150/-- have been withdrawn by said Abhishek Shivhare. Non-applicant No1. has submitted a letter to the SBI as to the death of Shail. It is alleged that Abhishek is trying to withdraw the said amounts illegally

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and unauthorizedly. There are other amounts lying in the name of the deceased. The amount of Rs.60993/- is lying in her account in the SBI and amount Rs.3,60,000/- is lying in the post office in her name. The amount of Rs.90150/- is lying in her another account bearing No.20155145021 in the SBI and service benefits are paid to Abhishek to the tune of Rs.10,91,163/-. It is contended that non-applicant Nos.1 and 2 along with applicant no.1 are entitled for 1/3rd share in the said amount and, therefore, he applied for Succession Certificate to withdraw the said amounts.

3. The application was contested by the applicants before the trial court on the ground that deceased Shail was legally adopted by Ramkrushna Shivhare who has taken all necessary care and provided good education to her. As far as receipt of the service benefits and the

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amounts lying are concerned, the same is admitted by the applicants. It was contended that Abhishek was adopted by her and his name was mentioned as her nominee and, therefore, only Abhishek is entitled for the said amounts.

4. The non-applicant No.2 also contested the application and supported the case of Shriram Gopalkrishna Shivhare, the original applicant.

5. After recording the evidence and appreciating the facts, learned Civil Judge Senior Division allowed the application partly and held that Laxmikant, Shriram, and Santosh are entitled to receive 1/3rd amount only in respect of amount of Rs.60,993/- lying in the bank account bearing No.10075948498.

6. Being aggrieved and dissatisfied with the same, original applicant Shriram preferred an appeal bearing

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Regular Civil Appeal No.242/2019 before the District Court at Nagpur. Learned Ad hoc District Judge-2 and Assistant Sessions Judge, Nagpur vide its judgment dated 25.8.2021 held that the applicant and non-applicant Nos.1 and 2 being the legal heirs of deceased Shail are entitled to claim 1/3rd share each in the amounts of Rs.10,91,163/-, Rs.3,60,000/- and Rs.60,993.60 total amounting to Rs.15,12,156.60 left behind by deceased Shail Shivhare and directed to issue the Succession Certificate.

7. Being aggrieved and dissatisfied with the said judgment and order, the present revision is preferred on the ground that applicant No.2 Abhishek is the nominee of deceased Shail and, therefore, he is entitled for the entire amount. It is further contended that Abhishek was adopted by the deceased and he was taking care of the deceased. In view of the provisions of Rule 115,

Sub-rule (ii) of the Maharashtra Civil Services (Pension) Rules, 1982 (MCSR), it is Abhishek, who is the nominee, is entitled to receive the amount. It is further contended that the definition of Family Pension is described in Rule 116(16)(b) of the MCSR. In view of the same also, Abhishek is only the person who is entitled for the said amount.

8. Heard learned counsel Shri R.D.Bhuibhar for the applicants and learned counsel Shri Abhishek S.Shukla for non-applicant No.1, and learned counsel Shri P.S.Gawai for non-applicant No.2.

Corrected as per
the Hon'ble Court's
Order dt.17.2.25

9. Learned counsel for the applicant submitted that applicant No.1 and non-applicant Nos.1 and 2 are brother and sister. Deceased was their sister who died on 6.5.2013. The applicant No.2 is the nephew of the deceased in whose favour the Succession Certificate was

granted. He was nominated by the deceased in her service record as well as in her accounts. The Succession Certificate is issued by learned Civil Judge Senior Division, Nagpur only to the extent of Rs.60,000/- considering Section 116 of the MCSR. He invited my attention towards provisions of sub-rule (ii) of sub-rule (1) of Rule 115 of the MCSR which states that a Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or Form 2, as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the [retirement gratuity/death gratuity] payable under rule 111. Rule 111 provided that if at the time of making the nomination (i) the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family: or (ii) the Government servant has

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no family, the nomination may be made in favour of a person or persons, or a body of individuals whether incorporated or not.

He further submitted that Section 116(16)(b) of the MCSR defines “family” in relation to the Government servant. As the deceased was unmarried and not left the family, she has nominated the applicant No.2 and, therefore, applicant No.2 is the only person who is entitled to receive the retiral benefits and rest of the amounts excluding the amount of Rs.60,993/-. Learned District Judge has not considered the aspect of nomination and wrongly passed an order which requires to be quashed and set aside.

10. *Per contra*, learned counsel Shri Abhishek S.Shukla for non-applicant No.1 submitted that applicant No.1 and non-applicant Nos.1 and 2 are legal

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heirs of deceased Shail. The applicant no.2, who is the nominee, is only entitled to receive the amount. He is no way concerned with the question of succession. All the benefits are received by the nominee from the part of the estate of the deceased which would devolve upon according to the Rule of Succession and, therefore, the order passed by learned District Judge is legal and proper one.

11. Learned counsel for the non-applicant No.2 supported the contentions of learned counsel for the non-applicant No.1.

12. In support of his contentions, learned counsel for the non-applicant No.1 has placed reliance on following decisions:

1. **Ram Chander Talwar and anr vs. Devender Kumar Talwar and ors**, reported in (2010)10 SCC 671;

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2. Shakti Yezdani and anr vs. Jayanand Jayant Salgaonkar and ors, reported in (2024)4 SCC 642;

3. Shakti Yezdani and anr vs. Jayanand Jayant Salgaonkar and ors, reported in 2016 SCC OnLine Bom 9834;

4. Shipra Sengupta vs. Mridul Sengupta and ors, reported in (2009)10 SCC 680, and

5. Sarbati Devi and anr vs. Smt.Usha Devi, reported in (1984)1 SCC 424.

On the basis of the catena of the decisions, he submitted that the amount payable would be governed by Law of Succession and a nominee could not be treated as an heir or legatee, and therefore, the revision is devoid of merits and liable to be rejected.

13. Upon hearing both the sides and perusing of the documents, undisputed facts are that applicant No.1 and non-applicant Nos.1 and 2 are brothers and sister. Deceased Shail was their sister. Applicant no.2 is the

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son of applicant No.1. Deceased was serving in the NMC in Library Department till her retirement i.e. 31.3.2013. She had received service benefits and invested the amount of Rs.3,60,000/- in the Postal Department and amount of Rs.60993/- in her SBI account. After her death, the service benefits to the tune of Rs.10,91,163/-are received by the applicant No.2 as he is the nominee nominated by deceased Shail.

14. It requires to be seen, whether the nominee is entitled to receive the amount left behind by deceased Shail.

15. Learned counsel for the applicants placed reliance on provisions of sub-rule (ii) of sub-rule (1)of Rule 115 of the MCSR. Whereas, learned counsel for non-applicant No.1 has placed reliance on Section 112 of the MCSR.

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16. Rule 112 of the MCSR deals with situation which states about persons to whom gratuity is payable. The said Rule is reproduced as under:

“112. Persons to whom gratuity is payable.

(1) (a) The gratuity payable under 111 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under rule 115.

(b) If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below:-

(i) if there are one more surviving members of the family as in clauses (i), (ii),(iii) and (iv) of sub-rule (5) of rule 111 to all such members in equal shares;

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(ii) If there are no such surviving members of the family as in clause (i) above, but there are one or more members as in clause (v), (vi), (vii), (viii), (ix), (x) and (xi) of sub-rule (5) of rule 111 to all such members in equal shares.

(2) If a Government servant dies after retirement without receiving the gratuity admissible under sub-rule (1) of rule 111 the gratuity shall be disbursed to the family in the manner indicated sub-rule (1).

(3) The right of female member of the family, or that of a brother, of a Government servant who dies while in service or after retirement, to receive the share of gratuity shall not be affected if the female member marries or re-marries, or the brother attains the age of eighteen years, after the death of the Government servant and before receiving her or his share of the gratuity.

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(4) Where gratuity is granted under rule 111 to a minor members of the family of the deceased Government servant, it shall be payable to the guardian on behalf of the minor after the guardian executes an indemnity bond in Form 28 and furnishes an affidavit about guardianship.

Note.- Hindu or a Christian mother shall not be required to execute an indemnity bond or affidavit being natural guardian.”

Whereas Rule 115 of the MCSR deals with the nominations. The said Rule is also reproduced for the purpose of reference, as under:

“115. Nominations.

A Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or Form 2, as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the [retirement gratuity/death gratuity] payable under rule 111.

Sub-rule (ii) of sub-rule (i) of Rule 115 of the MCSR deals with situation that when the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals whether incorporated or not.

17. Thus, Rule 115 deals with the nomination which is to be nominated to receive the retirement gratuity and death gratuity.

18. Whether the nominee is entitled for the estate left behind by the deceased is dealt with by the catena of decisions of the Hon'ble Apex Court.

19. In **Ram Chander Talwar and anr** *supra*, the issue before the Hon'ble Apex Court was, what would be the effect of nomination on right of other successor and while answering this aspect, the Hon'ble Apex Court

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explains that Section 45ZA(2) of the Banking Regulation Act, 1949, merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed.

20. In the case of **Vishin N.Khanchandani and anr vs. Vidya Lachmandas Khanchandani and ors, reported in (2000)6 SCC 724** also the Hon'ble Apex Court held that the nominee is entitled to receive sum due on the saving certificate yet he retains the same for the persons entitled to it under the relevant law of succession. It is further held that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. It is further held we find it difficult to treat a nominee as being equivalent to an heir or legatee. On the death of the policy holder, the amount payable under the policy became part of his estate which was governed by the law of succession applicable to him. Such succession may be testamentary or intestate. A nominee could not treated as being equivalent to heir or legatee.

21. In **Shakti Yezdani and anr** *supra* this Court at Principal Seat held that the provisions regarding nomination are made with a view to ensure estate or right to the deceased subject matter of nomination are protected till representative of the deceased take appropriate steps. The said decision was taken up to the Hon'ble Apex Court and the Hon'ble Apex Court, while dealing with the issue in the reported decision **(2024)4 SCC 642** held that the usual mode of succession is not to be impacted by such nomination. The legal heirs therefore have not been excluded by virtue of nomination. The issue before the Hon'ble Apex Court was that, whether a nominee of a holder of shares or securities appointed under Section 109A of the Companies Act, 1956 read with the Bye-laws under the Depositories Act, 1996 is entitled to the beneficial ownership of the shares or securities subject matter of

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nomination to the exclusion of all other persons who are entitled to inherit the estate of the holder as per the law of succession. While answering this question, the Hon'ble Apex Court held that an illuminating list of precedents, this Court as well as several High Courts have dealt with the concept of 'nomination' under legislations like the Government Savings Certificate Act 1959, the Banking Regulation Act, 1949, the Life Insurance Act, 1939 and the Employees Provident Fund and Miscellaneous Provisions Act, 26 of 42 1952. It would be apposite to refer to what the Court said on nomination, in reference to these legislations.

22. In **Sarbati Devi and anr** *supra*, the Hon'ble Apex Court held that nomination under Section 39 of the Insurance Act is subject of the claim of heirs of the assured under the law of succession.

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23. In **Nozer Gustad Commissariat v. Central Bank of India**, reported in 1992 SCC OnLine Bom 481 held that nomination under Section 10(2) of Employees' Provident Funds and Misc. Provisions Act, 1952 cannot be made in favour of non-family person relying upon the decision in the case of **Sarbati Devi and anr** *supra* to state that the principles therein were applicable to the employees to Provident Funds Act as well and not merely restricted to the Insurance Act.

24. In the case of **Vishin N.Khanchandani and anr** *supra*, the Hon'ble Apex Court held that nominee is entitled to receive the sum due on saving certificate under Section 6(1) of the Government Savings Certificates Act, 1959, but cannot utilize it. In fact, the nominee may retain the same for those entitled to it under the relevant Law of Succession.

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25. **Ram Chander Talwar and anr** *supra*, the Hon'ble Apex Court held that nomination made under the provisions of Section 45ZA of the Banking Regulation Act entitles the nominee to receive the deposit amount on the death of the depositors. The Hon'ble Apex Court in paragraph No.41 held that a consistent view appears to have been taken by the courts, while interpreting the related provisions of nomination under different statutes. It is clear from the referred judgments that the nomination so made would not lead to the nominee attaining. It is clear from the referred judgments that nomination so made would not lead to the nominee attaining absolute title over the subject property for which such nomination was made. The legal heirs therefore have not been excluded by virtue of nomination.

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26. In **Shipra Sengupta** *supra*, the **Hon'ble Apex Court** by referring the earlier Judgments held that despite nomination in mother's favour, wife being class one heir under the Hindu Succession Act is entitled to 50% of share. It is further held that nomination does not confer any beneficial interest on nominee. In view of the clear legal position, it is made abundantly clear that the amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee.

27. Thus, the consistent view is that the nominee on the basis of the nomination exercised by the deceased cannot claim to be an heir of the deceased and cannot claim the amount on the basis of the nomination. It is obligatory on his part to distribute the amount to the

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legal heirs of the deceased. Learned District Judge after referring the catena of decisions held that as per Section 15(d) of the Hindu Succession Act, the applicant No.1 and non-applicant Nos.1 and 2 have 1/3rd share each therein.

28. Thus, no illegality is committed by learned District Judge while passing the judgment and order and granting succession in favour of applicant No.1 and non-applicant Nos.1 and 2 declaring that they have 1/3rd share in each of the amount left behind by the deceased. The scope of civil revision petition is limited. It is not in the nature of appeal, but only factor to be considered is, whether there is any perversity in the order passed by the appellate court.

29. In view of the above, considering the consistent view taken by the Hon'ble Apex Court and this court,

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learned District Judge rightly held that nomination will not affect the right of the legal heirs and rightly decided the appeal and, therefore, there is no scope to interfere with the findings of learned District Judge at Nagpur.

30. Thus, the revision is devoid of merits and liable to be rejected and the same is **rejected**.

The revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!