IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

CIVIL REVISION No. 566 of 2025

CNR No.: MPHC010364882025

MONIKA BADGUJAR
Versus
SMT. PUSHPA KAHAR AND OTHERS

……

Appearance:

Shri Ajay Shankar Raizada - Advocate for the petitioner.

Shri Pramod Kumar Thakre - Advocate for the respondent Nos.1 & 2.

Shri Amit Kumar Sonil - Advocate for the respondent No.6.

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(O R D E R)
(Reserved on 15.09.2026)
(Pronounced on 26.11.2026)

The present revision under Section 384 of Indian Succession Act, 1925 (for short 'Act of 1925') has been filed challenging the order dated 12.03.2025 passed by the IVth District Judge, Narsinghpur in MCA No.22/2023 whereby the order passed by the trial Court in Succession Case No.17/2017 has been set aside. The present Revision has been filed alleging that the appeal has been decided ignoring the provisions of Section 39 (7) of the Insurance Act, 1938 (for short 'the Act of 1938').

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2. The necessary facts for disposal of present revision are not in dispute, and lie in narrow compass. The petitioner is wife of one late Mukesh Kahar who expired on 10.07.2017. He had taken out a life insurance policy prior to his death in which the nominee was the present petitioner. The respondents No.1 to 3 had filed an application seeking succession certificate for the proceeds of insurance policy in question, as well as the provident fund and gratuity payable upon death of the deceased who was employed with Mahanagar Telephone Nigam Limited (MTNL).

3. The aforesaid succession application was allowed vide order dated 24.11.2023 by the Civil Court directing payment to the applicant as well as to the respondents No.1 to 3 (who are Father, Mother and sister of the deceased) in equal 1/4 proportion in respect of the amounts to be received from Mahanagar Telephone Nigam Limited in the shape of provident fund, gratuity, insurance as well as life insurance policy with the respondent No.6/ICICI Prudential Life Insurance Company Limited.

4. Undisputedly, the applicant is the sole nominee of the insurance policy with ICICI Prudential Life Insurance Company.

5. Being aggrieved by the order of the Civil Court, the applicant filed an appeal before the District Court which has been decided vide impugned

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order dated 12.3.2025 and the impugned order passed by the Civil Court has been modified.

6. The appellate Court has directed that since the deceased Mukesh Kahar left two class-I legal representatives i.e. the present applicant being wife and the respondent No.1 being mother, therefore only these two persons are entitled to receive the benefits in 1/2 proportion each. The appellate Court, therefore, modified the order of the Civil Court and directed that the insurance, gratuity and provident fund amount payable by MTNL, Mumbai be paid in 1/2 proportion each to the applicant and the respondent No.1. The insurance policy taken out from ICICI Prudential Life Insurance Company should also be paid in 1/2 proportion to the appellant and the respondent No.1 being wife and mother of the deceased respectively.

7. The present revision has been pressed to the extent of 1/2 share given to the respondent No.1 i.e. mother of the deceased on the ground that the applicant being the wife of the deceased and nominee of the insurance policy, therefore is entitled to entire beneficial interest in the insurance policy in question in terms of amended Section 39(7) of the Insurance Act, 1938. It is only to this extent that the present Revision has been pressed.

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8. As noted above, the facts are not in dispute. It is not in dispute that the present applicant is the wife of the deceased. It is also not in dispute that the respondent No.1 is mother of the deceased. It is also not in dispute that the present applicant is the sole nominee of Insurance Policy No.20358364 taken out by deceased Mukesh Kahar from ICICI Prudential Life Insurance Company Limited. Now the only question that has been raised before this Court is that whether in terms of Section 39(7) of the Act of 1938, the present applicant would be entitled to entire beneficial interest in the proceeds of the said insurance policy or the proceeds would be payable as per the law of succession, that is, to be divided equally amongst all Class-I legal heirs of the deceased. The sole question that has been raised before this Court is interpretation of Section 39(7) of the Act of 1938 as it now stands in statute book in terms of amendment carried out in the said Act in the year 2015, whereby Section 39(7) has been amended.

9. Learned counsel for the applicant has vehemently argued that as per Section 39(7) of Act of 1938, as substituted vide Insurance Laws Amendment Act, 2015, in cases where the holder of insurance policy on his own life nominates his parents, or spouse or children or spouse and children or any of them, then the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them unless it is

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proved that the holder of the policy, having regard to nature of his title to the policy, could not have conferred such beneficial title on the nominee. It is therefore argued that now as per Section 39(7) of Act of 1938 read with Section 39(10), which declares that amended Section 39(7) shall apply to all life insurance policies maturing for payment after commencement of the Amendment Act of 2015, therefore the insurance policy having been taken out after the Amendment Act and having matured for payment also after the Amendment Act had been enforced, therefore, Section 39(7) of Act of 1938 as amended vide Amendment Act of 2015 would apply. It would be therefore clear that the nominee would have a beneficial interest in the policy which would simply mean that the nominee would be entitled to entire benefits of the policy. The nominee in the present case is the wife of deceased and the special provision that has been carved out by Section 39(7) by way of amendment is that where the nomination is in favour of parents or spouse or children or spouse and children or any of them, then there would be beneficial interest of the nominee in the proceeds of the life insurance. Therefore, it is argued that the impugned order passed by the appellate Court be further modified and in respect of proceeds of life insurance policy, the present applicant may be held solely entitled to benefits of the proceeds of insurance policy.

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10. *Per contra*, the learned counsel for the respondents has argued that the nominee, as is now well settled in law, is only a collector nominee and he gets authority only to collect the proceeds of the amount for which he has been nominated and then he has to distribute the proceeds among the persons truly entitled for the said amount. The persons truly entitled for the said amount would be all the legal representatives in equal proportion. As the deceased left behind him two class-I legal representatives, therefore notwithstanding the position that the applicant is the sole nominee of insurance policy, but still the amount would be divided amongst the applicant and the respondent No.1, being wife and mother of the deceased. The law of succession cannot be overridden by the Act of 1938 and the law in this regard is now well settled. Reliance is placed on a judgment of a Coordinate Bench of this Court in case of ***Arun Kumar Singh v. Jaya, 2022, SCC OnLine MP 5948***, wherein it has been held that beneficial interest in amount payable under life insurance policy on death of assured is payable to legal heirs of assured as per the law of succession. It is argued that in the aforesaid case a Coordinate Bench of this Court has considered the judgment of the Hon'ble Apex Court in the case of ***Sarbati Devi v. Usha Devi, (1984) 1 SCC 424*** wherein the Hon'ble Supreme Court has held that nomination would not confer any beneficial interest on the nominee and it is a mere authorization to receive the insurance amount. The

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amount can be claimed by the legal heirs of the assured in accordance with law of succession governing the parties. The said legal proposition is now well settled and the applicant cannot argue to get this well settled legal proposition unsettled in this case. It is well settled that nominee is only a collector nominee and he is not a beneficial nominee so as to claim benefit of the amount or title of the amount in himself. He has a limited right to collect the amount and distribute among the persons truly entitled to get the said amount.

11. This Court has heard learned counsel for the rival parties at length and perused the record.

12. The sole question that arises for adjudication of this Court in this case is interpretation of Section 39(7) of Act of 1938. The aforesaid Section 39(7) as substituted by Amendment Act of 2015 is as under:-

> *"(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be* ***beneficially entitled*** *to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee."*
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> (Emphasis supplied)

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13. The aforesaid provision clearly confers beneficial interest on the nominee in the life insurance proceeds where the holder of policy of insurance on his own life had nominated either his parents, or his spouse, or his children, or his spouse and children, or any of them. The provision further declares such nominee or nominees to be beneficially entitled to the amount payable by the insurer.

14. The aforesaid provision has been differently interpreted by different High Courts since it has been inserted in the statute book in the year 2015. In one line of cases by relying on the judgment in the case *of* ***Sarbati Devi (Supra)***, so also in the case of ***Shakti Yezdani v. Jayanand Jayant Salgaonkar, (2024) 4 SCC 642*****,** it has been held that irrespective of amended Section 39(7) in the Act of 1938, the nominee would remain a collector nominee and it would be his duty to collect the amount and distribute among the legal heirs, whereas in the other line of judgments, it has been considered by various High Courts that in view of amended Section 39(7), the nominee would be beneficial nominee and the nomination would exclude other legal heirs.

15. A coordinate Bench of this High Court in the case of ***Arun Kumar Singh (Supra)*** has also taken the view that the rights of legal heirs would not be affected by nomination. It was argued before this Court that the

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aforesaid judgment of Coordinate Bench of this Court is *per incuriam* inasmuch as though it notes the amended Section 39(7) in the argument part, but in the consideration part Section 39(7) as amended by the Amendment Act of 2015 has not been considered at all. Therefore, this judgment cannot be taken to be a binding authority of this Court on the proposition that in case of death of policyholder, the nominee would be the person beneficially entitled to receive the amount of life insurance or he would only be a collector nominee. The view in favor of nominees has been taken by the Madras High Court in case of ***A. Devika v. Senior Branch Manager, 2025 SCC OnLine Mad 12359***. The Andhra Pradesh High Court has also taken the same view favoring the nominee in the case of ***Mallela Manimala Versus Mallela Lakshmi Padmavathi, 2023 Supreme (AP) 389*.** The Rajasthan High Court in case of ***Ram Gopal Vs. General Public (CMA No. 27/2018 decided on 05/04/2019)*** has also taken a view in favour of the nominee.

16. On the other hand, the High Courts of Kerala, Allahabad, Karnataka and Madhya Pradesh have taken a view in favor of legal heirs. Madras High Court in one of the cases also has taken a view in favor of the legal heirs, but subsequently in the case of ***A. Devika (Supra)***, the earlier view in favour of legal heirs has been distinguished and modified view in favor of

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nominee has been taken by the Madras High Court. The Kerala High Court has taken the view in favor of nominee in the case of ***Prasanna Narendran Vs. The Insurance Ombudsman Office, 2025 Supreme (Online) (Ker) 44552***. The Allahabad High Court has taken the view in favor of legal heirs in case of **Kusum Vs. Anand Kumar and Others** reported in **2025 SCC OnLine All 2646**. The Karnataka High Court has taken the view in favor of nominees in case of ***Neelavva Vs. Chandravva and Others, 2025 SCC OnLine Kar 1945***. The Madras High Court has taken the view in favor of legal heirs in case of ***K.R. Sakthi Murugeswari Vs. Divisional Manager Divisional Office, 2023 SCC OnLine Mad 839***. However, this view has subsequently been distinguished by another Bench of Madras High Court in case of ***A. Devika (Supra)***. This High Court also, in case of ***Arun Kumar Singh (Supra)*** has taken a view in favor of the legal heirs.

17. This Court has the benefit of considering the views taken by different High Courts including this High Court. Though the views taken by the different High Courts would be persuasive, but the view taken by this High Court would be binding on this Court, unless it is found to be *per incuriam*.

18. In the cases in which view has been taken in favour of the legal heirs, the Courts have considered the judgment of the Hon'ble Supreme Court in the case of ***Sarbati Devi (Supra).*** However, the case of ***Sarbati Devi***

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(Supra) was a case of 1984 which is prior to the amendment being carried out in the Act of 1938 and substitution of Section 39(7) therein. The Courts in favor of legal heirs have also taken in consideration the judgment of the Hon'ble Supreme Court in case of ***Shakti Yezdani (Supra)*** in which the Hon'ble Supreme Court has considered the provisions of Section 45-ZA(2) of the Banking Regulation Act, Section 6(1) of the Government Savings Certificates Act and Section 109-B of the Companies Act, 1956 and held that none of these provisions confer beneficial interest on nominee and therefore the concerned Act providing for payment of proceeds of investments under these acts would not override the provisions of the Law of Succession and upheld the view earlier taken in the case of ***Sarbati Devi (Supra)*** as well as the view taken in cases of ***Ram Chander Talwar v. Devender Kumar Talwar, (2010) 10 SCC 671*** and ***Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani, (2000) 6 SCC 724***.

19. The Delhi High Court also considered the issue in the case of ***Shweta Singh Huria v. Santosh Huria, 2021 SCC OnLine Del 2492*** but did not conclusively decide the issue. In the said case, the judgment of the trial Court was in favor of the legal heirs and not in favor of the nominees. However, the trial Court had failed to consider the amended provisions of Section 39(7). The Delhi High Court, by noting the various provisions,

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ultimately did not give any conclusive finding, but remanded the matter to the trial Court to consider the amended provisions and then to pass a fresh judgment by deciding the matter afresh. Therefore, the judgment of the Delhi High Court in the case of ***Shweta Singh Huria (Supra)*** cannot be said to be authority either in favor of the nominees or in favor of the legal heirs. Though to some extent, it leans in favor of the nominees, yet stops short of conclusively deciding the issue in favor of the nominees.

20. So far as the Coordinate Bench of this Court in the case of ***Arun Kumar Singh (Supra)*** having held in favour of the legal heirs is concerned, it is seen by this Court that in the aforesaid case, though in the argument paragraphs the amendment of the year 2015 in the Act of 1938 has been considered, but in the consideration part the Coordinate Bench simply considered the considered the judgment of the Hon'ble Apex Court in the case of ***Sarbati Devi (Supra)*** and held that the aforesaid judgment has been followed successively by various High Courts and the law laid down by the Hon'ble Supreme Court in ***Sarbati Devi (Supra)*** is a binding dictum. It escaped attention of this Court in consideration part of the aforesaid order that after the case of ***Sarbati Devi (Supra)*** was decided by the Hon'ble Apex Court in the year 1984 there has been amendment in the Act of 1938 in the year 2015. Though noting the amendment in earlier part of the

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judgment but while giving finding the said amendment has not been considered by the Coordinate Bench at all. The relevant consideration part made by the Coordinate Bench is as under:-

> *"12. The preposition of law laid down by the Supreme Court in Sarbati Devi (supra) cannot be disputed and is a binding dictum. The Supreme Court held that nomination would not confer any beneficial interest on the nominee under and insurance policy and a nominee is only an authorized hand to receive the insurance amount, which is subject to be disbursement amongst the legal heirs under the law of succession, governing the parties.*
>
> *13. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Parliament has not chosen to make any amendment to the Act. In such situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. Thus, a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with law of succession governing them.*
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> *14. In light of above preposition and circumstances of the case, this Court finds that there is no illegality or perversity in the concurrent finding given by the Courts below in*

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> *favour of the respondents. Hence, no interference is required in the aforesaid orders."*

21. It escaped consideration of the coordinate Bench, that the amendments were suggested by the Law Commission in view of the judgment in the case of ***Sarbati Devi (supra)***. The coordinate Bench not having taken into consideration the amendment Act of 2015 and simply relied on ***Sarbati Devi (supra)***, is *per incuriam* and cannot be treated to be binding precedent on the question of interpretation of amendment Act of 2015 and amended Section 39(7) of the Act of 1938. Therefore, this Court is not bound by the judgment in the case of ***Arun Kumar Singh (Supra)***, the same being *per incuriam.*

22. In the case of **A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602**, a seven-judges Constitution Bench considered the principle of per incuriam as under in majority view :-

> *47. In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal,* ***when the said directions on 16-2-1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution****. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a court competent to try the offence. It was directed to try the appellant under the directions of this Court, which*

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was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper-book. He argued that since the transfers have been made under Section 407, the procedure would be that given in Section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of 5-4-1985 which was made in the presence of the appellant and his counsel as well as the counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant. ***It is a settled rule that if a decision has been given per incuriam the court can ignore it****. It is also true that the decision of this Court in the case of Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661 : (1955) 2 SCR 603, 623] was not regarding an order which had become conclusive inter partes. The court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.*

(Emphasis supplied)

Even the minority view recognized that when a statutory provision is ignored, the judgement will become per-incuriam, but it will continue to have binding effect on atleast that case between those parties, though may not have value as precedent for other cases. The minority view was as under :-

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182. It is asserted that the impugned directions issued by the FiveJudge Bench was per incuriam as it ignored the statute and the earlier Chadha case [AIR 1966 SC 1418 : (1966) 2 SCR 678 : 1966 Cri LJ 1071]

183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned*. In this context the word 'decision' means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter partes. Even if the earlier decision of the FiveJudge Bench is per incuriam the operative part of the order cannot be interfered within the manner now sought to be done. That apart the Five-Judge Bench gave its reason. The reason, in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section 407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point: (para 105)*

> *"Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to*

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> *take advantage of the matter being before a larger Bench."*
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> (Emphasis supplied)

23. In the case of **Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court, (1990) 3 SCC 682**, a 5-judges Constitutional bench held as under :-

> *44. An analysis of judicial precedent, ratio decidendi and the ambit of earlier and later decisions is to be found in the House of Lords' decision in F.A. & A.B. Ltd. v. Lupton (Inspector of Taxes) [1972 AC 634 : (1971) 3 All ER 948] , Lord Simon concerned with the decisions in Griffiths v. J.P. Harrison (Watford) Ltd. [1963 AC 1 : (1962) 1 All ER 909] and Finsbury Securities Ltd. v. Inland Revenue Commissioner [(1966) 1 WLR 1402 : (1966) 3 All ER 105] with their interrelationship and with the question whether Lupton's case [1972 AC 634 : (1971) 3 All ER 948] fell with-in the precedent established by the one or the other case, said: (AC p. 658)*
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> > *"...what constitutes binding precedent is the ratio decidendi of a case, and this is almost always to be ascertained by an analysis of the material facts of the case—that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material."*

24. In **Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC** it was held as under :-

> *19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty.* ***A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court.***

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> ***A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or larger Bench****; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.*
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> ***(Emphasis supplied)***

25. In **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**, the Constitutional Bench considered and affirmed the judgement of **Sundeep Kumar Bafna (supra)**, and while recognizing that the general principle is to follow the ratio of co-equal bench, held as under :-

> *28. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty.* ***A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh case [Rajesh v.***

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Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] but had been guided by Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167]. We have no hesitation that it is not a binding precedent on the co-equal Bench.

(Emphasis supplied)

26. In **Shah Faesal v. Union of India, (2020) 4 SCC 1**, another Constitution Bench held as under :-

> 29. In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] assumes great relevance : (SCC p. 716, para 183)
>
> *"183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word "decision" means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. ... Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)*
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> *'Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the*

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precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.'"

31. Therefore, the pertinent question before us is regarding the application of the rule of per incuriam. This Court while deciding Pranay Sethi case [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , referred to an earlier decision rendered by a two-Judge Bench in Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , wherein this Court emphasised upon the relevance and the applicability of the aforesaid rule : (Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , SCC p. 642, para 19)

"19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta."

27. The unamended and amended relevant parts of Section 39 are as under:-

Unamended Section 39:—

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"39. Nomination by policy-holder.-(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 applies or has at any time applied:

Amended Section 39:

39.(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the

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commencement of the Insurance Laws (Amendment) Act, 2015.

(11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy."

28. The aforesaid amendment in Section 39 was carried out by Amending Act No.5 of 2015 and was in pursuance to recommendations of 190th report of the Law Commission of India. The relevant portion of the report of Law Commission is as under:-

7.1.12. There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada,

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USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to s.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13. The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.

Final recommendations of the Law Commission: —

7.1.14. After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:

(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.

(b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.

(c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

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Suggested Amendment of Section 39:—

"7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

xxx xxx xxx

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom subsection (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

xxx xxx xxx

(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of this Act.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee

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or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation : For the purposes of this sub-section the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression 'collector nominee' means a nominee other than a beneficiary nominee."

29. The issue that was considered by the Law Commission was that there should be a distinction between beneficial nominee and a collector nominee. The law which is being followed in USA, Canada and South Africa cannot be followed in India because death of sole breadwinner of family immediately throws the remaining family into hardship in Indian setting. Therefore, it was suggested by the Law Commission that it seems harsh that legal representatives should be deprived of the proceeds of policy and the nominee should get the proceeds to the exclusion of legal representatives. The Law Commission thought it appropriate and reasonable that an option can be given to the policyholder to clearly express whether the nominee will collect the money on behalf of all legal representatives or whether the nominee will be the absolute owner of the money, in which case the nominee would be beneficial nominee. Otherwise, the nominee would be collector nominee. The Commission rejected the suggestion that provision similar to Section 45-ZA in the

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Banking Regulation Act, 1949 should be adopted. Therefore, the Commission was in the favor of carving out an option in the life insurance policies that the person taking out the insurance policy should have an option that whether the nominee would be beneficial nominee or would be a collector nominee. The Law Commission also suggested that in case where the policyholder does not specify so in the nomination column in clear terms, then by default, it would be deemed that the nominee would be beneficial nominee.

30. The Government and the Legislature, while considering the aforesaid recommendations of the Law Commission, did not thought it fit to incorporate option for the policyholder in Section 39 but carved out a provision by substitution of Section 39(7) that the nominee, in case of life insurance policy, would be beneficial nominee subject to condition that the nominee should be parents, or spouse, or children, or spouse and children, or any of them and then the nominee would be beneficially entitled to the amount payable by the insurer.

31. The amendments were carried out in pursuance to the190th report of the Law Commission and the problems being faced by the nominees and the legal representatives and the disputes arising between them were considered and the change of law was suggested by the Law Commission and that led to the amendment in Section 39(7) of Act of 1938. The

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Legislature was not bound by all the suggestions made by the Law Commission and the legislature in its wisdom decided not to grant option to the person taking out life insurance policy and making nomination, but by force of law carved out a provision that where nomination is in favor of specified category of persons then the nominee would be beneficial nominee.

32. The High Courts of Karnataka, Kerala and Allahabad have relied on the judgment in the case of ***Shakti Yezdani (Supra)*** to hold that nominee would remain a collector nominee. However, in the case of ***Shakti Yezdani (Supra)***, the Hon'ble Apex Court in para 13 thereof considered Section 109-A(3) of the Companies Act, 1956 which is as under:-

> *"109A NOMINATION OF SHARES*
> *(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in, or debentures of, the company, the nominee shall, on the death of the shareholder or holder of debentures of, the company or, as the case may be, on the death of the joint holders becomes entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of, the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner."*

33. The Hon'ble Supreme Court further considered Section 6(1) of the Government Savings Certificates Act, 1959, which is as under:-

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> ***"6. Nomination by holders of savings certificates.***
>
> *(1)Notwithstanding anything contained in any law for the time being in force, or in any disposition, testamentary or otherwise in respect of any savings certificate, where a nomination made in the prescribed manner purports to confer on any person the right to receive payment of the sum for the time being due on the savings certificate on the death of the holder thereof and before the maturity of the certificate, or before the certificate having reached maturity has been discharged, the nominee shall, on the death of the holder of the savings certificate, become entitled to the savings certificate and to be paid the sum due thereon to the exclusion of all others 31 persons, unless the nomination is varied or cancelled in the prescribed manner.*

34. The Hon'ble Apex Court further considered Section 109-B of the Companies Act, 1956 which is as under:-

> ***"109B. TRANSMISSION OF SHARES (1)*** *Any person who becomes a nominee by virtue of the provisions of section 109A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either –*
>
> *(a) to be registered himself as holder of the share or debenture, as the case may be ; or*
>
> *(b) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debenture holder, as the case may be, could have made.*
>
> *(2) If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, himself, as the case may be, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder, as the case may be.*
>
> *(3) All the limitations, restrictions and provisions of this Act relating to the right to transfer and the registration of transfers of shares or debentures shall be applicable to any such notice or*

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transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(4) A person, being a nominee, becoming entitled to a share or debenture by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share or debenture except that he shall not, before being registered a member in respect of his share or debenture, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company :

***Provided** that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share or debenture, until the requirements of the notice have been complied with.]*

1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998."

35. The Hon'ble Supreme Court further considered Section 45-ZA(2) of Banking Regulation Act, 1949, which is as under:-

*"**45ZA. Nomination for payment of depositors' money**.*

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner."

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36. All these provisions provide that the nominee shall become entitled to rights of the depositor or shareholder, but none of these provisions declares that the nominee shall be beneficial nominee nor these provisions provide expressly or infer by necessary implication, that the rights to be conferred on the nominee would be beneficiary rights and not the collector nominee rights.

37. Therefore, the provision of Section 39(7) of Act of 1938 is not *pari materia* with the provisions that have been considered by the Hon'ble Apex Court in the case of ***Shakti Yezdani (Supra)***. Though the Hon'ble Supreme Court considered the case of ***Sarbati Devi (Supra)***, but the aforesaid case is in terms of unamended provisions of Life Insurance Act, 1938. The amended provisions of Insurance Act, 1938 did not fall for consideration before the Hon'ble Apex Court in the case of ***Sarbati Devi (Supra),*** nor were considered in the case of ***Shakti Yezdani (Supra)***.

38. The language of Section 39(7) is very clear in declaring that the nominee would be beneficiary nominee in case the nominee falls within certain categories of persons related to the person taking out the insurance and making the nomination. Therefore, it is not as if the Legislature has not considered the consequences of the provision. The Legislature was alive to

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the position that the consequences would be exclusion of other legal representatives as against the rights being conferred on the nominee, and therefore, it decided to confer such rights only on a specific categories of relatives, if they are nominees, and not to any person who may be nominee of the life insurance policy.

39. One argument can be made that the provision provides for nomination of parents and parent includes father and in case of a married person, nomination in case of father to the exclusion of spouse and children would confer rights on Class-II heir and not on a Class-I heir and therefore, it will be something which is not contemplated in the law of succession.

40. The Act of 1938 is a special law and it is settled in law that a special law would override the provisions of a general law. The legislature was conscious of the position that usually it happens that a person who is ensuring his life wants certain benefits to accrue to the beneficiary which are over and above this estate left by the insured person. A person takes out life insurance usually when he feels that the estate that would be left by him upon his death would be insufficient to meet the requirements of his dependents after his death. Therefore, life insurance is taken out to take care of the dependents after death of the insured person. To avoid financial

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distress of dependents, life insurance is taken out to create a estate for such persons in case of death of insured person.

41. A person creating an asset, very creation of which is contingent upon death of the person insured, he would usually like to insure the interest of his dependents. Taking out life insurance does not lead to creation of asset so long as the insured life is alive, but that asset comes into existence only upon death of the insured life. The person who is insuring his life wants to secure the interest of the dependents in case of his untimely death and therefore the nominations made in life insurance products are usually made in favour of such persons who are perceived by the insured person as vulnerable persons in case of his untimely death.

42. It was also argued in the cases before other High Courts that it may happen that a person before marriage may nominate his parents to get benefits in the life insurance policies but thereafter he may get married and in such cases the nomination would exclude the rights of the wives and even the children. It may also happen that at the time of taking out a insurance product there may not be children of the insured person but later on he may have children and those children would not be having any claim in the insurance policy and unknowingly they may be ousted from the benefits of the insurance policy in such cases. There may be cases of

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change of marital status by way of divorce after taking out the policy and making nomination therein.

43. Such apprehensions are also uncalled for because what is contemplated by the Legislature is that beneficial interest would accrue on the nominee only in case the nominees are certain categories of related persons. Therefore, by necessary implication it infers that the life insured at the time of making the nomination should be aware of the existence of other legal representatives. In case after making the nomination any other Class-I legal representatives comes into existence by way of marriage or birth then by necessary implication the provisions of Section 39(7) would not be read to the exclusion of that legal representative who comes into existence by way of marriage or birth after making the nomination. In such cases, the nominee would only be a collector nominee.

44. Therefore, it is held that Section 39(7) of the Insurance Act, 1938 as amended by Amendment Act 5 of 2015 excludes other legal representatives and gives sole beneficiary rights to the nominee(s), provided the nominee(s) fall within the categories of relatives as contained in Section 39(7) above. It is however observed that in case any legal representative comes into existence by way of marriage or birth after the date of making nomination, then such legal representatives shall not be deemed to be

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excluded by way of the nomination in terms of Section 39(7) of Act of 1938 and the nominee would then only be a collector nominee.

45. In view of the aforesaid, the present revision deserves to and hereby succeeds. The impugned order passed by the appellate Court is modified to the extent that so far as the proceeds flowing out of the life insurance policy taken out by the deceased from ICICI Prudential Life Insurance Company is concerned, the applicant shall be sole beneficiary of the proceeds of the insurance policy in terms of the nomination made by the deceased.

46. In above terms, the revision stands **allowed and disposed off**.

(VIVEK JAIN)
JUDGE

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