

UPET010069462025

**IN THE COURT OF THE A.D.J., COURT NO. 1, ETAH****Present: Manisha – 'H.J.S.' (J.O. CODE UP6137)****Misc. Civil cases No.- 207 OF 2025**

- 1) Smt. Nisha Singh, aged about 35 years, W/o Late Vivek Pratap Singh.
- 2) Ayansh Pratap Singh (Minor), aged about 06 years, S/o Late Vivek Pratap Singh.
- 3) Atharv Pratap Singh (Minor), aged about 03 years, S/o Late Vivek Pratap Singh. All residents of Village Naraura, Pargana and Tehsil Jalesar, District Etah.

(Minor applicants No. 2 and 3 are under the natural guardianship of their mother, Applicant No. 1).

.....Appellants

**VERSUS**

- 1) Smt. Archana Devi, aged about 56 years, W/o Late Dharmveer Singh, Resident of Village Naraura, Pargana and Tehsil Jalesar, District Etah.
- 2) Manager, Canara Bank, Sulabh Branch, First Floor, Canara Bank Bhawan, Civil Lines, Etah, District Etah.

.....Respondents

**ORDER**

- 1) The present Misc. Civil Case has been instituted by the applicants under the relevant provisions of the Hindu Minority and Guardianship Act, 1956, read with the Code of Civil Procedure, 1908. The applicants seek the permission of this Court for Applicant No. 1, in her capacity as the natural guardian of minor Applicants No. 2 and 3, to mortgage the shares of the said minors in the property inherited from their deceased father, Shri Vivek Pratap Singh. The primary relief sought is the authorization to mortgage the immovable property (Gata No. 190/.781, area .261 hectares, situated at Village Awagarh Dehat) in favor of Canara Bank to secure and continue a business loan essential for the livelihood and welfare of the minor applicants.
- 2) The factual matrix of the case, as per the pleadings, is that Shri Vivek Pratap Singh (husband of Applicant No. 1 and father of Applicants No. 2 and 3) purchased a 1/3rd share of Gata No. 190/.781, measuring .261 hectares, via a registered sale deed dated 03.09.2021. The deceased had

**Additional District Judge, Court No.-1, Etah**

subsequently converted the said land into 'Abadi' (residential/commercial use) and established a business under the name and style of "IBP Inter Private Shahbazpur Awagarh," of which he was the sole proprietor. For the expansion and operation of this business, the deceased had obtained financial assistance from Canara Bank (Opposite Party No. 2) under the MSME scheme, involving a limit of ₹70 Lakhs, against which the said property was mortgaged. Following the untimely demise of Shri Vivek Pratap Singh on 21.05.2025, the applicants, being the sole legal heirs, inherited the property in equal shares (1/3rd each). The Applicant No. 1 is currently managing the business; however, the Bank requires a fresh execution of mortgage documents as the previous mortgage stood affected by the death of the original mortgagor. The applicants contend that without the renewal of this credit facility, the business will collapse, causing irreparable financial loss to the minors.

- 3) The applicants have raised grounds in support of their prayer for permission to mortgage are that applicant No. 1 is the biological mother and natural guardian of the minors, providing for their upbringing and maintenance. The property in question was the self-acquired property of the deceased, and the mortgage was originally created by him during his lifetime. The business is the only source of income for the family, and its survival depends entirely on the continued financial support from the Bank. The legal heirs (the widow and two minor sons) each hold a 1/3rd share, and since the minors cannot legally contract, the permission of the Court is a statutory necessity under Section 8 of the Hindu Minority and Guardianship Act, 1956. The proposed mortgage is for the "evident advantage" and "necessity" of the minors to ensure their future financial security.
- 4) Opposite Party No. 1, the mother of the deceased and grandmother of the minors, has been impleaded. The applicants state that she resides with them and had no objection to the mortgage during her son's lifetime, as the property was his self-acquired asset. Opposite Party No. 2 (Canara Bank) has indicated its readiness to extend the loan facility subject to the completion of legal formalities, including the valid mortgage of the entire property, which necessitates Court permission regarding the minors' shares. No substantial objections have been placed on record to suggest that the mortgage is detrimental to the interests of the minors.
- 5) Based on the pleadings and the nature of the application, the following points for determination arise:

- Whether Smt. Nisha Singh (Applicant No. 1) is the natural guardian of minor Applicants No. 2 and 3?
  - Whether the proposed mortgage of the minors' 2/3rd share in the subject property is for the necessity or for the evident advantage of the minors?
  - Whether the permission to mortgage should be granted subject to certain conditions to safeguard the interests of the minors?
- 6) Under Section 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a Hindu minor in respect of the minor's person as well as in respect of the minor's property is the father, and after him, the mother. In the present case, the death certificate of Shri Vivek Pratap Singh confirms his demise on 21.05.2025. Consequently, Applicant No. 1, being the mother, is the natural guardian of the minors. This Court finds that she is currently in custody of the minors and is responsible for their welfare.
- 7) Section 8(2) of the Hindu Minority and Guardianship Act, 1956, mandates that the natural guardian shall not, without the previous permission of the court, mortgage or charge any part of the immovable property of the minor. Section 8(3) further clarifies that any disposal of immovable property in contravention of this is voidable at the instance of the minor. The standard for granting such permission is "necessity" or "evident advantage" of the minor.
- 8) In the present matter, the evidence (Bank statements and GST registration) suggests that the business was a running concern with a significant turnover and a pre-existing liability of ₹70 Lakhs. If the mortgage is not renewed, the Bank may initiate recovery proceedings under the SARFAESI Act or the RDB Act, which would lead to the forced sale of the property, potentially at a value lower than its market worth, thereby destroying the minors' inheritance. Conversely, allowing the mortgage enables the continuation of the business, which provides for the minors' education and maintenance. This Court is of the view that preserving a running business and preventing a default on a pre-existing debt constitutes both a legal necessity and an evident advantage for the minors.
- 9) After considering the totality of the circumstances, the Khatauni (record of rights), and the commercial nature of the property (Abadi), this Court concludes that it is in the best interest of the minors to allow the natural guardian to mortgage their shares to sustain the family business. The welfare of the minor is the paramount consideration, and in this case,

the welfare is tied to the financial stability provided by the business established by their late father.

**ORDER**

The Misc. Civil Case No. 207/2025 (Smt. Nisha Singh & Others vs. Smt. Archana Devi & Another) is hereby **Allowed**.

Smt. Nisha Singh (Applicant No. 1) is hereby granted permission, in her capacity as the natural guardian of minor Applicants No. 2 and 3 (Ayansh Pratap Singh and Atharv Pratap Singh), to mortgage the minors' respective 1/3rd shares (totaling 2/3rd) in the property situated at Gata No. 190/.781, area .261 hectares, Village Awagarh Dehat, District Etah, in favor of Canara Bank, Sulabh Branch, Etah.

This permission is subject to the following conditions:

- 1) The loan amount secured through this mortgage shall be utilized strictly for the operation and debt servicing of the firm "IBP Inter Private Shahbazpur Awagarh."
- 2) The Applicant No. 1 shall ensure that the interest of the minors is not jeopardized by any willful default.
- 3) This permission shall not empower the applicant to sell the property without a separate, specific order from a competent court.

Date: 09.04.2026

(Manisha)  
A.D.J., Court No. 1,  
Etah

Order pronounced, signed and dated in open Court today.

Date: 09.04.2026

(Manisha)  
A.D.J., Court No. 1,  
Etah