

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 20600 of 2012

ORDER :

%Dated 04-02-2016

Dasari Pullamma PETITIONER

VERSUS

\$ The Andhra Bank, rep.by its Deputy
General Manager, Zonal Office,
Kurnool, Kurnool District
and two others. RESPONDENTS

! Counsel for Petitioner : Sri V.R.Reddy Kovvuri

^ Counsel for Respondents : Sri V.Raghu for R-1 & R-2

< GIST :

> HEAD NOTE :

? Cases referred :

[1] (2010) 10 SCC 671
2 (2000) 6 SCC 724

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 20600 of 2012

ORDER:

Dasari Pullamma, who is the sister of one late Pulla Reddy filed the present Writ Petition questioning the action of the respondents 1 and 2/Andhra Bank in refusing to pay a sum of Rs.1,35,845/- along with interest accrued thereon lying in the Savings Bank Account No.13738 of Ankamma who is the wife of Pulla Reddy as illegal, arbitrary and violative of the fundamental rights under Articles 14 and 21 of the Constitution of India.

The averments in the affidavit filed in support of the Writ Petition would show that one late Pulla Reddy, who was an employee in M/s. Ramakrishna Chemicals at Y.S.R. District, died on 02.11.2000. The said Pulla Reddy had no issues and his wife by name Ankamma received the entire death-cum-retirement benefits to a tune of Rs.1,50,000/-. Out of the said amount, Ankamma deposited an amount of Rs.1,05,845/- with second respondent/Andhra Bank, Tadipatri Branch in Savings Account No.13738. On 22.01.2001 Ankamma died. The petitioner, who claims to be the only successor to her brother/Pulla Reddy and sister-in-law/Ankamma approached the Zonal Office of the said Bank at Kurnool to settle the claim. Since they were postponing the issue on one pretext or the other, she got issued a legal notice on 30.01.2001 through his Advocate at Kadapa for settlement of the claim. A reply to the said notice came to be issued in the month of June, 2001 stating that the 3rd respondent herein, who is the brother of said Ankamma, is also claiming right over the said amount. Since there were two rival claimants, it was stated that the said amount could not be paid to any of the parties and accordingly advised the petitioner to get a declaration from the competent court of law to enable the Bank to settle the claim. In view of the averments in the reply notice, the petitioner herein filed S.O.P. No.6 of 2002 on the file of the Senior Civil Judge, Kadapa, seeking issuance of succession certificate for an amount of Rs.1,35,845/-. The said O.P. was contested by the 3rd respondent and the Court after conducting a full-fledged trial allowed the same vide decree dated 24.06.2011. Aggrieved by the same, the 3rd respondent filed an appeal i.e., A.S. No.38 of 2005 on the file of the Principal District Judge, Kadapa, which was dismissed on 30.09.2009. Later, C.R.P. No.418 of 2010 was filed before this Hon'ble court and the same was also dismissed on 19.04.2010. After disposal

of the C.R.P., the petitioner herein is said to have produced the succession certificate along with judgment and decree passed by the court, requesting respondents No.1 and 2 to settle the claim in her favour. Since there was no action on behalf of respondents 1 and 2, the petitioner got issued a legal notice dated 01.08.2011 calling upon the 2nd respondent to settle the claim within a week from the date of receipt of the notice. A reply to the notice dated 20.09.2011 came to be issued stating that the Bank was constrained to settle the claim in favour of nominee of the deceased Ankamma since there was no response from the petitioner for nearly three years as per Bank Rules and as per law for the time being in force. Challenging the said action of the respondents in settling the claim in favour of the 3rd respondent, the present Writ Petition is filed.

Though notice was served on 3rd respondent there is no response from him. The respondents 1 and 2 filed their counter denying the averments made in the writ petition. It is their case that the deceased Ankamma who was a Saving Bank holder in their Branch nominated the 3rd respondent as the nominee for the said account. Since there was no communication to the Bank after the reply notice dated 04.06.2001, the Bank was constrained to settle the claim in favour of the nominee of the deceased. It is further stated that under Section 45 ZA of the Banking Regulation Act, 1949, only the nominee would be entitled to all the rights of the sole depositor unless the same is varied or cancelled in prescribed manner. In view of the above, it is said that the relief sought for in the Writ Petition cannot be granted.

Reiterating the averments made in the writ petition, the learned counsel for the petitioner vehemently contends that the Bank has erred in releasing the amounts in favour of the 3rd respondent, having asked the petitioner to get the succession certificate from a competent court. It is urged that the action of the respondent/Bank in releasing the amount in favour of the 3rd respondent without notice or waiting for the production of the succession certificate is illegal and improper. The counsel took me through the "Master circulation on claims" dated 20.01.2004 in support of his plea.

On the other hand, the learned standing counsel appearing for the Bank opposed the same stating that Section 45 ZA to ZF which were incorporated to the Banking Regulation Act postulates payment of money only to the nominee and that the guidelines referred to by the petitioner would apply in a case where the claim is made by a person other than a legal heir/nominee.

Before dealing with Section 45 Z of the Act, it would be useful to refer to "master circular on claims" issued by Andhra Bank Head Office, Hyderabad vide circular No.475 dated 20.01.2004. The said circular which deals with settlement of death claims states that in cases where valid nominations are not recorded and the claimants submitted their papers, the Branches should scrutinize the same in the presence of claimants and assist them in filling up all the required documents. It further states that the death claims shall be settled against indemnity of two sureties who are worth twice the claim amount. The Bank Branches were advised to obtain written consent of the claimants as per the proforma annexed to the Circular for such re-deposit and submit the same along with the claim forms. The Reserve Bank of India, Department of Banking operations and Development, vide its letter No.BC/148/09.07.007/99-2000 dated 14.03.2000 states that the requirement of insisting of succession certificate from the legal heirs should be totally withdrawn irrespective of the amount involved. The Circular further states that the Bank should adopt such safeguards in settling claims as they consider appropriate including taking of indemnity bond. The Reserve Bank of India further clarified that whenever there are disputes between legal heirs of the deceased depositor or where all the legal heirs do not join the claim or the Bank has reasonable doubt about the genuineness of the claimant as being the only legal heir of the depositor, the succession certificate can be called for. In such case, the Branches were advised to call for the production of succession certificate or appropriate orders from a competent court of law.

From a reading of the above, it is clear that the branches of Nationalized Bank should insist upon succession certificate in cases where there is no nomination or in cases where there are disputes among the legalheirs of the deceased depositor or where all the legalheirs do not join or where the Bank has some doubt about the genuinity of the legalheirs. In case of nomination, the said master circular refers to a circular dated 29.03.1985 issued by Government communicating the date on which the provision for nomination amongst others shall come into force. Pursuant thereto, Sections 45ZA to 45ZF of Banking Regulation Act were added by way of Act 1/84 which came into effect from 29.03.1985. It deals with the circulars issued with reference to the precautions and the procedure to be followed for obtaining nominations. Section 45-ZA which deals with nominations for payment of depositors money reads as under:

“45ZA: Nomination for payment of depositors’ money:

(1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together, may nominate, in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.

(2) Notwithstanding anything contained in any other law for the time being in force or in any deposition, 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 depositors 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.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge to the banking company to its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

A reading of Section 45ZA(2) would show that 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 depositors 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. From a reading of circular dated 20.01.2004 and Section 45-ZA, it is clear that the earlier part of the circular deals with insistence of succession certificate where there is no nomination and in case of nomination the nominee alone would be entitled to all the rights of the sole depositor under Section 45-ZA of the Act. Dealing with the said aspect, the Apex Court in Ram Chander Talwar and another v. Devender Kumar Talwar and others^[1] held as under:

“Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with 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 no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45- ZA(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.”

Similarly in **Vishin N.Khanchandani and another v. Vidya Lachmandas Khanchandani and another**^[2] the Apex Court held as under :

“7. Under the circumstances this appeal is allowed with a direction that the succession certificates shall be issued in favour of the respondents in respect of debts detailed in Annexures A and B to the application filed in the Court of Civil Judge, Senior Division, Thane subject to their payment of necessary Court-fees and estate duty certificate. The respondents would, however, not be entitled to directly receive the amounts payable on account of debts payable under National Savings Certificates at Sl.Nos.17 to 26 in Annexure A and S1. Nos.1 to 4 in Annexure B. The appellants are held entitled to receive the sum due on the aforesaid national savings certificates in which they are the nominees upon furnishing the undertaking in terms of sub-section (2) of Section 8 of the Act in the Court of Civil Judge, Senior Division, Thane. The amount received by the appellants on account of the National Savings Certificates in which they are nominees shall be payable to the respondents after deduction of the amounts of debts or other demands lawfully paid or discharged, if any. Costs made easy. Order accordingly.”

From the judgment referred to above, and having regard to Section 45-ZA of the Act, is clear that the nominee would be the custodian of the proceeds of the account and if any claim is made by the legal heir the same would be decided in accordance with the rule of succession. The material on record reveals that the third respondent was a nominee to the savings bank account standing in the name of Ankamma.

At this stage, the learned counsel for the petitioner tried to convince the Court stating that in the reply notice, the respondent/Bank authorities themselves directed the petitioner to obtain the succession certificate promising to pay the money only to those persons who produce the succession certificate. Having said so, the Bank authorities have acted contrary to their stand by releasing the money in favour of the 3rd respondent, who has no right over the said property. It is true that the Advocate, who issued the notice, under the instructions of 1st and 2nd respondents, stated that the money would be paid to the person who produce the succession certificate, but in the reply notice dated 20.09.2011 it has been stated that since there was no order from competent court to stop payment of amount lying in the account of the deceased to the nominee Sri C.Pratap Reddy and since the writ petitioner kept quiet after receiving the reply notice dated 04.06.2001, the respondent/Bank being left with no other option released the amount in favour of the 3rd respondent. But it is to be noted that any action done either by the lawyer or by a lawyer under the instructions of client shall only be in accordance with law. Since the contents of the notice are contrary to the law and statute referred to above, the petitioner cannot take advantage of the same. Therefore, obtaining the succession certificate may not come to the rescue of the petitioner since the Bank was not a party to the proceedings and the money be paid only to the custodian i.e., the nominee.

Viewed from any angle, I see no merit in the Writ Petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed, leaving it open to the petitioner to claim the same from the nominee if she is entitled to in accordance with law. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Dt: 04.02.2016

Note : L.R. copy to be marked.

B/o. GM

^[1] (2010)10 SCC 671

^[2] (2000)6 Supreme Court Cases 724