

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24th September, 2012

Pronounced on: 19th October, 2012

+ **FAO 264/2008**

MR.C.S. CLARKE & ORS.

..... Appellants

Through: Mr.J.P.Sengh, Sr.Advocate with Mohd.
Aneez-ur-Rehman, Advocate

versus

STATE (GOVT. OF NCT OF DELHI) & ANR.

.... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is directed against a judgment dated 21st January, 2008 passed by the Court below whereby a Petition for grant of Succession Certificate in respect of the debts and securities held by the deceased H.P.Hardie was dismissed and two other Petitions filed by D.R.Hopkins and Mrs.Dawn Annie Lown were dismissed in default.
2. It would be convenient to understand the facts of the case from paras 2 to 10 of the impugned judgment which are extracted hereunder:

“2. First Petition is preferred by D.R.Hopkins. Second Petition is preferred by Mr.C.S.Clarke and his two children being Lrs. of Mrs.P.Clarke who expired during pendency of the Petition filed by D.R.Hopkins in which Mrs.P.Clarke had filed objections and subsequently her three Lrs. Namely C.S.Clarke, Dona Clarke, Christine Clarke were substituted as Lrs. Third Petition is preferred by Ms.Dawn Anny Hermione Lown.

3. Brief facts are that deceased was real paternal uncle of Mrs.Dawn and the step father of D.R.Hopkins and he was working as

Workshop, Superintendent with M/s Pure Drinks Pvt. Ltd., New Delhi. Mr.Hopkins is actually son of Mrs. G.M. Hopkins and Mr.D.H.Hopkins both of whom have now expired. When Dr.Hopkins Petitioner was four years old, his parents separated and divorced each other and subsequently his mother Mrs.G.M.Hopkins married the deceased Mr.H.P.Hardie. Thus, Mrs.Hopkins became Mrs.Hardie and she expired on 4/5/1985.

4. It is claimed by Petitioner D.R.Hopkins that after death of his mother his steps father H.P.Hardie deceased shifted to his residence and started residing with the Petitioner till the time of his death on 10/9/1990.

5. Admitted position in this case is that deceased nominated Mrs.Helen Hopkins wife of Petitioner D.R.Hopkins for the provident fund and gratuity in his employer company but she expired in March, 1990 before the deceased. After death of Helen Hopkins the deceased nominated one Mrs.P.Clark wife of C.S.Clark as a nominee in his office. It is claimed that Mrs.P.Clark and Mrs.Helen Hopkins were colleague in Frank Anthony Public School, New Delhi and the deceased used to visit Mrs.P.Clark after death of Mrs.Helen Hopkins.

6. Deceased retired on 31/8/90 and expired on 10/9/90. Admitted position is that deceased died intestate.

7. In the Petition filed by D.R.Hopkins initially Mrs.Dawn Annie Lown filed no objections in favour of D.R.Hopkins but subsequently she preferred separate Petition claiming succession certificate. Mrs.P.Clark filed objection in the Petition claiming that she was nominee and therefore entitled to the dues of the deceased.

8. Mrs.P.Clark had filed her objections in the Petition filed by Mr.Hopkins and my Ld. Predecessor Court vide order dated 12/8/91 observed that prima facie Dr.Hopkins has no case since Mrs.P.Clark was a nominee and thus he vacated an ex-parte ad-interim injunction granted by his Predecessor Sh.Satnam Singh the then Ld. Sub Judge vide order dated 23/10/90. The stay was vacated on 12/8/91. The said nomine Mrs.P.Clark however expired on 4/10/91 before payment could be made to her by M/s Pure Drinks and thereafter her husband Mr.C.S.Clark and her two children filed the Petition Claiming succession certificate being Lrs.of Mrs.P.Clark.

9. There is no dispute that Mrs.P.Clark was the nominee of the deceased in the records of M/s Pure Drinks. Nor there is any dispute that Mr.C.S.Clark and other two Petitioners children of P.Clark are her Lrs.

10. The question however which arises in the Petition of C.S.Clarke is that whether Mr.C.S.Clarke and his two children are entitled to the succession certificate regarding debts and securities of the deceased H.P.Hardie. Admittedly, there is no relationship between deceased and these Petitioners C.S.Clarke and his two children. The only ground on which this Petition for succession is preferred is that Mrs.P.Clarke who was wife of C.S.Clarke and mother of other two Petitioners was a nominee in the records of office of deceased.”

3. The Court below relied on the report of the Supreme Court in *Smt.Sarabati Devi & Anr. v. Smt.Usha Devi*, AIR 1984 SC 346 and *Vishin N.Kanchandani v. Vidya Lachmandas Kanchandani*, AIR 2000 SC 2747 to hold that a mere nomination did not confer any beneficial interest in favour of the nominee. Thus, the Court below held that the nominee was merely to receive money for and on behalf of the successor. Thus, it was held that the Appellants were not entitled to a Succession Certificate and the Petition filed by them was dismissed.
4. Learned counsel for the Appellants tried to draw a distinction between the nominee under the Insurance Act, 1938 and under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (for short 'the PF Act of 1952). It is urged that the distinction between the two Acts would be clearly discernible from the Section 10 (2) of the PF Act of 1952 which provided that the amount standing to the credit of a member of the Fund at the time of his death would vest in the nominee and it would be free from any debts or liability incurred by the deceased or nominee before the death of the member.
5. Reliance is placed on a judgment of Calcutta High Court in the case of *Smt. Usha Majumdar & Ors. v. Smt.Smriti Basu*, AIR 1988 115 wherein it was laid down that the nominee under the PF Act of 1952 unlike the nominee under the Insurance Act, 1938 has not only "right to receive" the money but

also the beneficial interest therein.

6. Paras 13 and 14 of the Report are extracted hereunder:-

“13. Having given our anxious consideration to the various provisions of the Provident Fund Act and the Scheme we are of the opinion that the status of a nominee under the Provident Fund Act is completely different from his counterpart under the Insurance Act. The most and striking difference about the status of the nominee under the two Acts is clearly discernible from Section 10(2) of the Provident Fund Act quoted earlier which expressly provides that the amount standing to the credit of a member of the Fund at the time of his death shall vest in the nominee and it shall be free from any debt or liability incurred by the deceased or the nominee before the death of the member. From Section 10(2) it is abundantly clear that immediately upon the death of the member the provident fund money becomes part of the asset of the nominee whereas under the Insurance Act after the death of the assured the money continues to be his asset; and the money which was standing to the credit of the member becomes free even from the debt or liability incurred by the nominee before the death of the member. Only because the money vested in and thereby became the property of the nominee after the death of the member such a provision was required to be incorporated as, otherwise, being estate of the nominee, it was liable to be attached for debts or liabilities incurred by him prior to the death of the member. That the nominee under the Provident Fund Act, unlike the nominee under the Insurance Act, gets a right to the money also has been made clear by the provisions of paras 61 and 70 of the Scheme quoted earlier.

14. It is of course true that para 70 is prefixed with the heading "Accumulation of a deceased member to whom payable;" and relying upon the same the Andhra Pradesh High Court held, in the case of Shaik Dawood, AIR 1985 AP 321 (supra), that the principle laid down by the Supreme Court in the case of Sarbati Devi, [1984]1SCR992 (supra) would be equally applicable under the Provident fund Act but we regret our inability to agree with the views so expressed for reasons to follows. Headings or titles prefixed to a section cannot restrict the meaning of the section itself if its language is clear and as our discussion will presently show, the language of para 70 is manifest. But before however we proceed to analyse para 70 let us examine para 61 of the Scheme. Under this para if a member, who had

no family of his own, makes an outsider his nominee, such nomination will automatically fail if he subsequently acquires a family and he will have to make a fresh nomination in favour of one or more persons belonging to his family. It will be pertinent to point out that under Section 39 of the Insurance Act there is no such mandate; and under Section 38 thereof a life insurance policy can even be assigned or transferred. Para 61(2) envisages that a member may in his nomination distribute the amount that may stand to his credit in the funds amongst his nominees in his own discretion and sub-para (5) thereof says that if one of the nominees predeceases the member the interest of that nominee shall revert to the member who may make a fresh nomination in respect of such interest. The word "distribute" means divide, apportion, allot, dispense and therefore when the member has been empowered "to distribute the amount amongst his nominees at his discretion" it certainly means that thereby he would be giving the amount to them. A concept of distribution as envisaged in para 61(2) of the Scheme cannot by any stretch of imagination mean that the member was distributing the right to receive the money amongst his nominees. That by such distribution the nominee acquires ownership to the money has again been made explicitly clear by the word "interest" appearing in sub-para (5). The word "interest" obviously means the right to the money that accrued in favour of the nominee consequent upon its distribution by the member. It is of course true that the member may modify his nomination even during his lifetime and thereby extinguish a nominee's interest but then ultimately the nominee, whoever he may be, acquires an interest in the money."

7. A similar question fell for consideration before this Court in *Omwati v. Delhi Transport Corporation & Ors.* (1987) 61 Comp Cas 801 (Delhi).
8. This Court drew the distinction between the provisions of Section 5(1) of the Provident Funds Act, 1925 (for short 'the Act of 1925) and the PF Act of 1952 and held that the non-obstante clause in Section 5 of the Act of 1925 did not find place in the Scheme framed under the PF Act of 1952 and since this was a subsequent legislation the departure must be deliberate. It was held that "right to receive" the provident fund amount by a nominee under

the PF Act of 1952, therefore, could not be interpreted in the same way as “right to receive” the amount by a nominee under Section 5 of the Act of 1925. Thus, it was held that a nominee under the Act of 1952 was only entitled to receive the money lying in the scheme under this Act which is to be disbursed to the legal heirs.

9. The High Court of Bombay in *Mr. Antonio Joao Fernandes v. The Assistant Provident Fund Commissioner & Ors.*, 2010 (4) Bom CR 208 referred with approval the view taken in *Omwati (supra)* and declined to follow the view taken by the Calcutta High Court in *Usha Majumdar (supra)*. The Bombay High Court also relied on *Smt. Sarabati Devi (supra)* to hold that the word “vests” is a word of variable import and does not clothe a nominee with an absolute title or a beneficial title in respect of the provident fund amount lying to the credit of the deceased.
10. The Bombay High Court also relied on *The Fruit & Vegetable Merchants' Union v. The Delhi Improvement Trust*, AIR 1957 SC 344 and held as under:

“In the case of Nozer Gustad Commissariat v. Central Bank of India and Ors. (supra), this Court refereed to the ‘The Fruit and Vegetable Merchants' Union v. The Delhi Improvement Trust’, AIR 1957 SC 344, to find out the meaning of the word “vests”. The Apex Court stated in the aforesaid decision that;

The expression “vests” has a variety of meanings and that in all cases it did not mean that the property was owned by the person or the authority in whom it vested. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been use in a particular piece of legislation. It was held in terms in that case that in the context the word “vest” may mean mere possession of property for a particular purpose.

This Court further held that the word “vests” is a word of variable import as shown by provisions of various Indian statues and further held that the use of the word “vest” in Section 10(2) of the Act of 1952

does not clothe a nominee with absolute title or beneficial title in respect of provident fund amount lying to the credit of the deceased. This Court further held that the nominee is merely authorized to receive the amount for the benefit of heirs of the deceased. In other words, vesting of the amounts in the nominee is for limited purpose of receiving the amount from employer and handing over the same to the heirs entitled thereto. This Court also referred to the case of Smt. Sarbati Devi v. Smt. Usha Devi (supra) which was in relation to the interpretation of Section 39 of Insurance Act, 1938 and reiterated that the Apex Court held that the nomination only indicated the hand which was authorised to receive the amount, on the payment of which the insurer gets a discharge of its liability under the policy and noted that it was held by the Apex Court that the amount can be claimed by the heirs of the assured in accordance with law of succession governing them.”

11. Thus, it is evident that the Appellants’ predecessor (deceased Mrs.P.Clarke) did not have a right to receive (for her own benefit) the amount lying in the account of the deceased H.P.Hardie who was the member of the scheme under the Act of 1952. However, the Appellants being the legal heirs and representatives of the deceased nominee would be entitled to receive the amount as an agent or trustee of the legal heirs and representatives of the deceased. I am supported in this view by a judgment of the High Court of Allahabad in *Smt. Shobha Sharma v. Keshav Narain & Ors.*, 1978 AWC 554 where the legal heirs and representatives of the nominee were granted the Succession Certificate as an agent or trustee of the legal heirs and representatives of the deceased.

12. Para 19 of the Report are extracted hereunder:-

“19. The position, therefore, is that the orders of the courts below are to be confirmed, but with this modification that the opposite party Keshav Narain is certainly entitled to succession certificate for the money payable under the two policies taken by the deceased, but he would receive that amount merely as an agent or trustee of the heirs and legal representatives of the deceased and not in his own right.

This money would constitute a part of the estate of the deceased and the rightful heir or legal representative would be entitled to have it from the nominee.”

13. In view of the above, the Appeal is allowed and the Appellants are entitled to a Succession Certificate in respect of the amount lying in the scheme under the Act of 1952 which is at present deposited with the Trial Court. The amount shall be released in favour of the Appellants being an agent of the legal heirs and representatives of the deceased (H.P.Hardie). Thus, this money would constitute a part of the estate of the deceased and the rightful legal heirs/representatives would be entitled to have it from the Appellants.
14. The Appeal is allowed in the above terms.

(G.P. MITTAL)
JUDGE

OCTOBER 19, 2012

v