IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1909 of 2014

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Gopal Ram Son Of Late Baliram Ram Resident of Village - Ismailpur, Buxar, P.O. Gajadharganj, P.S. Buxar (M), District - Buxar

.... Petitioner

Versus

1. Branch Manager, Bank of India, Buxar Branch, District - Buxar
2. Hare Krishan Ram Son of Late Baliram Ram Resident of Village - Ismailpur, Buxar, P.O. Gajadharganj, P.S. Buxar (M), District - Buxar

.... Respondents

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Appearance:

For the Petitioner : Mr. BACHAN JEE OJHA,ADVOCATE
For the Respondents : Mr. DR. BINAY KUMAR SINGH, ADVOCATE
Mr. AMIT SINGH, ADVOCATE

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 14-12-2015

Heard learned counsel for the petitioner and learned counsel for the Respondent Bank.

2. The writ petition has been filed with a prayer for a direction to the Respondent Bank to give half share of the amount contained in Account No. 6919 and also in 6920 to the petitioner which are in the name of his deceased father an mother and further to direct the Respondent Bank not to pay the amounts in question to the Respondent No. 2.

3. It is submitted on behalf of the petitioner that being the full brother of the respondent no. 2, the petitioner is entitled to ½ share of the maturity proceeds of the two fixed

deposits of Rs.1.00,000/- each which had been issued in favour of the father and mother of the petitioner respectively, during their lifetime. It is stated that the respondent Bank shall not to be permitted to make the maturity proceeds in their entirety to the petitioner's brother, respondent no. 2 who is named as the nominee in both the fixed deposits, to the exclusion of the petitioner who is also equally entitled to the property upon succession, pursuant to death of his parents.

4. Learned counsel for the petitioner relies on a decision in Challamma vs. Tilaga and Others [2009 (4) BBCJ 116] dealing with the aspect of nomination.

5. Learned counsel for the respondent Bank on the other hand, opposes the writ petition relying on Section 45ZA (2) of the Banking Regulation Act, 1949 to submit that as far as the Bank is concerned, it is obliged to make payment to the nominee to avoid violation of such statutory provision.

6. Having heard the parties and on consideration of the materials on record, this Court is of the view that the writ petition is completely devoid of any merit. The provisions of Section 45ZA (2) of the Banking Regulation Act, 1949 are reproduced hereinbelow for ready reference:-

> "(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.”

7. It is therefore, evident from the said provision that pursuant to death of a depositor, payment is required to be made to the named nominee and such payment constitutes a valid discharge of liability as against the person making the payment.

8. The decision relied upon by the petitioner notices the principle enunciated in the earlier decision in Vishin N. Khanchandani & Anr. vs. Vidya Lachmandas Khanchandani & Anr. [(2000) 6 SCC 724] in the following terms:-

> *“…… The nomination only indicated the hand which was authorised to receive the amount on the payment of which the insurer got a valid discharge of its liability under the policy. The policy-holder continued to have an interest in the policy during his lifetime and the nominee acquired no sort of interest in the policy during the lifetime of the policy-holder. On the death of the policy-holder, the amount payable under the policy became part of his estate which was governed by the law of succession applicable to him. Such succession may be testamentary or intestate. Section 39 did not operate as a third kind of succession which could be stayed as a statutory testament. A nominee could not be treated as being equivalent to an heir or legatee. The amount of interest*

> *under the policy could, therefore, be claimed by the heirs of the assured in accordance with the law of succession governing them."*

9. In the instant case, there is no dispute with regard to the existence of a valid nomination in respect of the fixed deposits in favour of the respondent no. 2. In that view of the matter and in the backdrop of Section 45ZA (2) referred to above, no direction can be issued to the respondent Bank for making payment to the Respondent No. 2 being the validly appointed nominee of the petitioner's parents during their lifetime.

10. Needless to say, the petitioner may pursue any appropriate remedy for claiming such share as he may have in the maturity proceeds of the fixed deposits, before the appropriate forum as may be available to him in accordance with law.

11. The writ petition stands dismissed.

(Vikash Jain, J)

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