

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WA.No. 1777 of 2015 () IN WP(C).15008/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 15008/2015 of HIGH COURT OF
KERALA DATED 09-07-2015

APPELLANT(S)/PETITIONERS:

1. NARAYANI SOBHANA AGED 73 YEARS
WIFE OF LATE P.BHARATHAN PILLAI, SRI.VILAS, KOLLAM
PIN 691001

2. NARAYANAN, BHARATHAN, AGED 49 YEARS
SON OF LATE P.BHARATHAN PILLAISRI VILAS, KOLLAM
PIN 691 001, NOW RESIDING AT 'NAKSHATHRA', CONTONMENT
KOLLAM - 691 001.

BY ADVS.SRI.A.V.THOMAS (SR.)
SMT.M.M.JASMIN
SRI.NIDHI SAM JOHNS
SRI.LIJO JOSEPH

RESPONDENT(S)/RESPONDENTS:

1. STATE BANK OF INDIA
SME BRANCH, CHAMAKKADA
KOLLAM- 691 001 REPRESENTED BY ITS ASSISTANT GENERAL MANAGER

2. ASSISTANT GENERAL MANAGER
ASSISTANT GENERAL MANAGERSTATE BANK OF INDIA
SME BRANCH, CHAMAKKADA, KOLLAM - 691 001.

3. THE CHIEF GENERAL MANAGER,
STATE BANK OF INDIA, LOCAL HEAD OFFICES.S.KOVIL ROAD
THIRUVANANTHAPURAM - 695001.

4. THE CHAIRMAN,
STATE BANK OF INDIA
3RD FLOOR G BLOCK SYNERGY BUILDING
BANDRA KURLA COMPLEX, BANDRA EAST, MUMBAI
400051.

BY SRI.R.S.KALKURA, SC, SBI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ALONG WITH
W.A.NO.1787 OF 2015 ON 13-08-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.Nos.1777 & 1787 of 2015

Dated this the 13th August, 2015

JUDGMENT

Ashok Bhushan, CJ.

These two Writ Appeals have been filed by the appellants against the same judgment dated 9.7.2015 passed in W.P(C).No.15008 of 2015 praying for the following reliefs:

- “i. issue a writ of certiorari or any other appropriate writ order or direction, quashing Exhibit P16.*
- ii. issue a writ of mandamus or any other appropriate writ order or direction, commanding the respondents to allow the petitioners to operate the accounts with them in the name of the firm Asiatic Export Enterprises;*
- iii. Declare that the petitioners are entitled to operate the accounts with the respondent bank in the name of Asiatic Export Enterprises;*

iv. issue such other appropriate writ, order or direction as this Hon'ble Court deem fit and proper, in the circumstances of the case."

2. Asiatic Export Enterprises was constituted by a partnership deed dated 16.5.1995 being late P.Bharathan Pillai as the Managing Partner. As per deed of partnership dated 20.10.1999, the first petitioner was also inducted as partner in the said firm. The financial transactions of the partnership firm were being operated through the first respondent Bank apart from several fixed deposit accounts as mentioned in paragraph 2 of the Writ Petition. Late P.Bharathan Pillai executed a Will on 27.8.2010. As per the said Will, his share in the partnership firm was bequeathed to his two daughters, Ponnamma Lakshmi Narayani and Narayani Lakshmi Sobhana. The Will further mentioned that 10% of the capital investment in the firm shall go equally among the 3rd and 4th legatees, namely, Ponnamma Lakshmi Naryani and Narayani Lakshmi Sobhana. P.Bharathan Pillai died on 12.9.2010. Prior to

that, the second petitioner had given a notice to all other partners regarding the intention to dissolve the firm. Consequent to the death of P.Bharathan Pillai, as per the terms of the Will, his entire share and interest in the partnership firm became vested with Ponnamma Lakshmi Narayani and Narayani Lakshmi Sobhana. All the partners informed the Bank by letter dated 14.9.2010 engaging the first petitioner to operate the Bank account. The second petitioner wrote a letter dated 18.1.2011 to the Bank that operation of the accounts by the first petitioner alone should not be allowed and that any withdrawals should be with his concurrence. The Bank informed the first petitioner by letter dated 2.6.2014 that there appears to be strong difference of opinion among the parties and they are yet to reconstitute the firm. Further the Bank is expected to refrain from allowing the rest of the partners from operating the accounts. The Bank advised to obtain an order from the High Court for a direction to the Bank for disbursing the statutory dues of the firm.

3. One Parameswaran Bharathan, who was also one of the legal heirs of deceased P.Bharathan Pillai, has sworn an affidavit attested by the Notary that as per the last Will executed by his late father, the entire share and interests over the partnership firm are being bequeathed to Ponnammam Lakshmi Narayani and Narayani Lakshmi Sobhana and he had no objection to the said bequest. It was further sworn that he had no objection in the Bank allowing operation of all the accounts, withdrawal of deposits etc. in the name of the firm, through the remaining partners. The Bank requested the first petitioner by letter dated 25.3.2015 to reconstitute the partnership in the manner provided under the Partnership Act and submit a representation for operation of the account. In the above background, the petitioners filed the Writ Petition.

4. The Bank also appeared before the learned Single Judge. The learned Single Judge, after hearing the parties, disposed of the Writ Petition with the following direction in paragraph 7 of the judgment:

“7. The petitioners shall make an application undertaking to give an indemnity bond and a No Objection Certificate before the respondent Bank, on which the Bank shall determine the respective shares and direct the partners to execute the indemnity bond in favour of the Bank with respect to their individual shares. On further production of the No Objection Certificate of the remaining son the amounts determined as share of each partner shall be disbursed to them individually by separate cheques issued in each individuals name.”

Aggrieved by the aforesaid direction issued by the learned Single Judge, both the petitioners and the respondents have come up in these Writ Appeals.

5. Learned counsel for the appellants in W.A.No.1777 of 2015 submits that if all the legal heirs submit an indemnity bond, the petitioners have no objection in permitting the operation of the account. He also submitted that the petitioners and all legal heirs of the partners are allowed to submit the indemnity bond along with no objection certificate and affidavit of the legal heir Parameswaran Bharathan, who is not a partner.

6. In view of the stand taken by both the parties in these Writ Appeals, we are of the view that no useful purpose shall be served in sustaining the direction issued by the learned Single Judge. It is not necessary for the Bank to determine the respective shares and thereafter direct the partners to execute the indemnity bond. Learned counsel for the Bank submits that the Bank cannot adjudicate any of the rights or get involved in the determination of the rights of the partners inter se. We find substance in the submission of learned counsel for the Bank.

In view of the aforesaid, we dispose of the Writ Appeals with the following directions:

I. All the partners of the firm shall submit an indemnity bond to the Bank with regard to operation of the accounts in the Bank.

II. Sri.Parameswaran Bharathan, another son of late P.Bharathan Pillai, who is not a partner, shall submit a no objection certificate along with an affidavit with regard to the operation of the accounts by the Bank.

III. After receiving the aforesaid documents, the Bank shall permit operation of the accounts by the writ petitioners as agreed.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs