

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.28937 OF 2014

ORDER:

The petitioner prays for Mandamus declaring the refusal of respondent Bank in releasing the amounts alleged to have been bequeathed to petitioner under the codicil dated 12.09.2013 and registered Will dated 19.12.2007, as illegal, contrary to the banking procedure and practice and unconstitutional.

The averments, in brief, are that the petitioner claims to be the wife of one Pulusuganti Ramachandra Rao. On 15.04.1967, the marriage was solemnized between the petitioner and the said Ramachandra Rao. On 19.12.2007, Ramachandra Rao, it is stated, executed a Will bequeathing the properties to his children and wives. The said Will is the last Will. The codicil on 12.09.2013 was executed bequeathing Rs.5 lakhs under deposit with the respondent Bank vide Account No.32620755631 to petitioners.

On 04.11.2013, the testator died, thus opening succession to the property of Ramachandra Rao. The petitioner, on the strength of codicil dated 12.09.2013, compels the 1st respondent to release the said sum of Rs.5 lakhs lying in Account No.32620755631 to her. As the 1st respondent was not obliging the request of petitioner, the present writ petition is filed for the prayer referred to above.

The 1st respondent filed counter affidavit and the objections are both factual and legal. The 1st respondent objects to the maintainability of writ petition under Article 226 of the Constitution of India. On the writ averments, the 1st respondent joins issue on

the codicil alleged to have been executed in favour of petitioner.

It is stated that unless and until the case of petitioner on the strength of codicil is accepted by a competent Court in accordance with the Succession Act, the release of amount in favour of petitioner is illegal and amounts to deviation from established banking practices. The 1st respondent further states that admittedly Ramachandra Rao has two wives and the issues are required to be settled by a competent Civil Court for release of deposit amount.

The 2nd and 3rd respondents filed counter affidavit joining issue with petitioner on every material assertion in the writ affidavit. As the scope of present writ petition is not to decide whether the succession to the properties of late Ramachandra Rao is intestate or testamentary, I am not referring to the rival claims.

Heard learned counsel for petitioner and learned counsel for respondents.

Now the point for consideration is whether in the facts and circumstances stated above, the writ petition is maintainable and the petitioner is entitled for grant of any relief against respondents.

The issue in the writ petition relates to release of Rs.5 lakhs standing in the name of late Ramachandra Rao in Account No.32620755631. The petitioner relies upon codicil dated 12.09.2013. Admittedly, the deceased has two wives and children as well. Now basing upon the codicil dated 12.09.2013 to the exclusion of other successors-in-interest of Ramachandra Rao, the petitioner prays for release of Rs.5 lakhs to her.

In support of writ prayer, the learned counsel for the petitioner places strong reliance upon the decision reported in **ROHINI v. ALL CONCERNED** to contend that no probate or letters of administration is required under Article 213(2) of the Indian Succession Act, 1925 and the 1st respondent be directed to release the amount.

The issue for consideration in the present writ petition is whether the respondents insisted upon probate or letters of administration on the codicil dated 12.09.2013 and whether the codicil is a legal and binding document on which a right can be claimed by petitioner or accepted by the 1st respondent. Therefore, the decision is distinguishable and not applicable to the facts and circumstances of the case.

From the very nature of prayer and having regard to the objections raised by the respondents, I am of the view that the prayer is misconceived and the remedy under Article 226 of the Constitution of India is not appropriate. The petitioner has to work out her remedies in a properly instituted suit or proceeding for release of Rs.5 lakhs

in favour of the petitioner.

The writ petition is dismissed as not maintainable under Article 226 of the Constitution of India. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V.BHATT, J

1st June, 2015

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