

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

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Judgment reserved on: 22.05.2015

Judgment delivered on:30.06.2015

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WP(C) 3712/2015

JUSTICE U.N. BACHAWAT (RTD.) & ANR.

..... Petitioners

Versus

CHIEF POST MASTER GENERAL & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr P.D. Gupta, Mr R.K. Seewal, Mr G.C. Rawal & Mr V.K. Gupta, Advocates.

For the Respondents: Mr Prasanta Varma, Mr Sushil Kumar Pandey & Ms Pratibha Varma, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER,J

1. Petitioner no.1 has approached the court with the instant petition to lay claim to the money lying deposited in two accounts opened by his late wife Ms Vimala Devi Bachawat with the Alaknanda Post Office, New Delhi, represented by Respondent no.3. Petitioner no.1's claim is based on a Will dated 15.01.2008, executed by late Ms Vimala Devi Bachawat, in his favour.

1.1 Respondent no.3, however, has refused to entertain the claim based on an opinion received from its head office at Kalkaji i.e. respondent no.2, to the effect, that the money lying deposited in the two accounts of Ms Vimala Devi Bachawat can only be claimed by her nominee i.e. petitioner

no.2.

1.2 The reasoning advanced by respondent no.2 appears to be that the Will executed in favour of petitioner no.1 cannot supersede the nomination made by the deceased in favour of petitioner no.2. The rejection of petitioner no.1's request made vide application dated 23/31.01.2012 was communicated via a letter dated 07.03.2012, issued by respondent no.2.

2. Therefore, the only question which arises for consideration is : as to whether petitioner no.1 can lay claim to the money lying in the two accounts maintained by his deceased wife with respondent no.2, on the basis of the Will dated 15.01.2008?

3. Before I proceed further, it may be useful to detail out certain broad facts which have led to the filing of the present petition.

3.1 Late Ms Vimala Devi Bachawat opened a Savings Bank (SB) account bearing no. 1142281 and a Senior Citizens' Saving Scheme (SCSS) account bearing no. 100964. The initial deposit made in the SB account was a sum of Rs. 1000/-, whereas that, in the SCSS account was a sum of Rs. 4.50 lacs. The deposit, in the SB account, was made on 16.10.2006, while the deposit in the SCSS account, was made on 18.10.2006.

3.2 In accordance with the mandate issued and as per the facility available under the rules/ scheme, which governed the SCSS account, the interest accrued was, automatically, transferred to the SB account. The rules which govern the SCSS account are titled as : Senior Citizens Savings Scheme Rules, 2004 (in short the 2004 Rules).

3.3 Pertinently, late Ms Vimala Devi Bachawat, chose petitioner no.2, who is her grand-son, as a nominee qua the aforementioned accounts.

3.4 As per the scheme/ rules applicable to the SCSS account, no withdrawal could be made from the said account for a period of five (5)

years. Therefore, the lock-in period, in respect of the SCSS account, could have come to an end only in October, 2011.

3.5 Unfortunately, Ms Vimala Devi Bachawat expired on 25.04.2011. It appears though, that prior to her death, she had, as indicated above, executed a Will in favour of petitioner no.1 i.e. her husband. By virtue of the said Will, she has not only superseded her earlier Will but, has also, bequeathed, all her movable and immovable assets to petitioner no.1, which includes specifically the proceeds lying deposited in the two accounts referred to above with the Alaknanda Post Office, New Delhi i.e. respondent no.3.

3.6 The factum of, the death of late Ms Vimala Devi Bachawat was communicated by petitioner no.2 to respondent no.2 vide communication dated 23.01.2012. In the said communication petitioner no.2 clearly stated that with the execution of the Will dated 15.01.2008, petitioner no.1 had become the sole beneficiary of the estate of the deceased, “inspite of any nomination” made in that behalf. A specific request was made that a cheque for the amount standing to the credit of the deceased, along with accrued interest, be issued in favour of petitioner no.1. The letter was accompanied by the following documents:

- (i) Duly filled in Claim Form.
- (ii) Annexure I (Letter of Indemnity).
- (iii) Annexure II (Affidavit).
- (iv) Annexure III (Letter of Disclaimer on Affidavit).
- (v) Copy of Death Certificate of Ms Vimala Devi Bachawat.
- (vi) Copy of Will dated 15.01.2008 of Ms Vimala Devi Bachawat.
- (vii) Passbook of Account No. 100964 in original.

3.7 As would be evident from the annexures appended to the petitioner

no.2's letter dated 23.01.2012, that a letter of disclaimer (i.e. Annexure III) by way of an affidavit was submitted by, one, Dr. Ashok Bachawat, who is the son of the deceased Ms Vimala Devi Bachawat and the father of petitioner no.2.

3.8 By this affidavit Dr. Ashok Bachawat communicated to respondent no.2 that, he and his legal heirs, executors, representatives, and assigns, which included petitioner no.2, relinquish their claim to the moneys lying in the said accounts pursuant to the Will dated 15.01.2008; which bequeathed, inter alia, amongst other assets, the funds lying in the aforementioned SB and SCSS accounts in favour of petitioner no.1.

3.9 Almost simultaneously, petitioner no.1 vide letter dated 23.01.2012 made a similar request, albeit to respondent no.3. The said communication was accompanied by the following documents;

- (i) Duly filled in Claim Form.
- (ii) Certificate by two witnesses along with their self attested photo id's.
- (iii) Annexure I (Letter of Indemnity).
- (iv) Annexure II (Affidavit).
- (v) Annexure III (Letter of Disclaimer on Affidavit).
- (vi) Copy of Will dated 15.01.2008 of Ms Vimala Devi Bachawat.
- (vii) Copy of Death Certificate of Ms Vimala Devi Bachawat.
- (viii) Passbook of Savings Account No. 1142281 in original.

4. As indicated above, respondent no.3 did not allow the request of the petitioners. The rejection of the request was communicated vide letter dated 07.03.2012.

5. Aggrieved by the rejection of their request, the petitioners, decided to move this court by way of a petition under Article 226 of the Constitution. Notice in the petition was issued on 17.04.2015, whereupon the

respondents, have filed their reply.

5.1 Parties were represented by their counsels. Both, Mr P.D. Gupta, who appeared on behalf of the petitioners, and Mr Prasanta Verma, who appeared on behalf of the respondents, in their oral submissions, adhered to the stand taken in the pleadings.

6. The principal submissions of the respondents, in support of the impugned communication, is pivoted on the provisions of Rule 6 of the 2004 Rules and Section 4 of The Government Savings Bank Act, 1873 (in short the 1873 Act). Based on the provisions of the said Rule and Act, it was stated that the moneys standing to the credit of the deceased Ms Vimala Devi Bachawat, could only be released in favour of nominee i.e. petitioner no.2.

6.1 It was contended that Section 4 of the 1873 Act contained a non obstante clause, which obliged respondents to release the money in the aforementioned accounts only in favour of the nominee, notwithstanding anything contained in any law, for the time being in force, or any disposition whether testamentary or otherwise by the depositor in respect of his/her deposit.

7. Mr Gupta, learned counsel for the petitioners contended to the contrary. His stand was briefly that the nominee was only a custodian of funds and that with the intercession of the Will dated 15.01.2008, the deposited funds had to be paid by the respondents to petitioner no.1.

REASONS

8. Having heard the learned counsels for the parties, it is evident, what is crucial to the case, is the legal status of a nominee. The legal status of the nominee is an aspect which is no longer res integra.

8.1 The Supreme Court for the first time lent clarity to the issue in its

judgement rendered in the case of *Sarbati Devi (Smt) & Anr. vs Usha Devi, (1984) 1 SCC 424*.

8.2 By this judgement, the Supreme Court reiterated the view held by the majority of the High Courts in the country. The contra view though, at the relevant point in time was held by two judgements of this court and one judgement of the Allahabad High Court.

8.3 In sum, the Supreme Court held, in the context of Section 39¹ of the Life Insurance Act, 1938 (in short the LIC Act) that mere nomination under Section 39 of the said Act did not confer “beneficial interest” in the nominee qua the amount payable under the policy on the death of the assured. The nomination, according to the Supreme Court, was indicative, only of, the authority or the person, who was to receive the amount, pursuant to which, the insurer would get a valid discharge of its liability under the policy. This, however, would not belie the claim of the heirs of the assured, made in accordance with the law of succession governing them.

9. I may only note that the language of Section 39 of the LIC Act is not

¹ **39. Nomination by policy-holder.**- (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement, or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section the said section 6 shall be deemed not to apply or not to have applied to the policy.

pari materia with that which obtains in Section 4 of the 1873 Act. At this juncture, it may be relevant to set down the provisions of both Rule 6(1) of the 2004 Rules and Section 4 & 5 of the 1873 Act, on which, reliance has been placed by the respondents.

“2004 Rules

..6. Nomination: (1) The depositor may at the time of opening of the account under these rules, nominate a person or persons who, in the event of death of the depositor, shall be entitled to payment due on the account...”

“1873 Act

..4. Nomination by depositor :- (1) Notwithstanding anything contained in any law for the time being in force, or in any disposition whether testamentary or otherwise, by a depositor in respect of his deposit, where any nomination made in the prescribed manner purports to confer on any person the right to receive the deposit on the death of the depositor, the nominee shall, on the death of the depositor, become entitled to the exclusion of all the other persons, to be paid the deposit, unless the nomination is varied or cancelled in the prescribed manner.

(2) Any nomination referred to in sub-section (1) shall become void if the nominee predeceases or where there are two or more nominees all the nominees predecease the depositor.

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

5. Payment to be a discharge: - (1) Any payment made in accordance with the foregoing provisions of this Act shall be a full discharge from all further liability in respect of the money so paid.

(2) Saving of right of executor: But nothing herein contained precludes (prevent) any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands

after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

(3) Saving of right of creditor:- And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act to any person, and remaining in his hand unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased...”

10. Apparent difficulty, if any, which may at first blush encounter, is met, upon a perusal of two other judgements of the Supreme Court, pronounced in the case of *Shri Vishan N. Khanchandani & Anr. vs Vidya Lachmandas Khanchandani & Anr.*, (2000) 6 SCC 724 and *Ramchandar Talwar & Anr. vs Devender Kumar Talwar & Ors.*, (2010) 10 SCC 617.

10.1 In *Vishan N. Khanchandani’s* case, the Supreme Court was considering the provisions of the Government Savings Certificate Act, 1959 (in short the 1959 Act), pursuant to which national saving certificates were issued.

10.2 The provisions of Section 6 and 8 were relied upon to suggest that the ratio laid down in *Sarbati Devi’s* case would not apply. Pertinently, provisions of Section 6(1) of the 1959 Act are *pari materia* with Section 4(1) of 1873 Act. As a matter of fact, Section 5(1) and 5(2) of the 1873 Act are *pari materia* with Section 8(1)² and 8(2) of the 1959 Act.

10.3 Similarly, in *Ramchandar Talwar’s* case, the Supreme Court was considering the provisions of Section 45-ZA(2)³ of the Banking Regulation

² 8. **Payment to be a full discharge:-** (1) Any payment made in accordance with the foregoing provisions of this Act to a minor or to his parent or guardian or to a nominee or to any other person shall be a full discharge from all further liability in respect of the sum so paid.

(2) Nothing in sub-section (1) shall be deemed to preclude any executor or administrator or other representative of a deceased holder of a savings certificate from recovering from the person receiving the same under Section 7 the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

³ **45ZA(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 to 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.

Act, 1949.

10.4 Despite, the difference in the language of the provisions (as found incorporated in the LIC Act when compared with the provisions of 1959 Act), the Supreme Court affirmed the jurisprudential principle that a nomination did not oust the testamentary and non-testamentary rights. In sum the principle set forth in the Sarbati Devi's case was reiterated.

10.5 This view was also expressed by the Supreme Court in another judgement rendered in the case of *Shipra Sengupta vs Mridul Sengupta & Ors.*, (2009) 10 SCC 680.

10.6 Therefore, a conjoint reading of Rule 6 and Section 4 & 5 would show, that while receipt of money by the nominee, after the death of the person who maintained the account (i.e. the depositor), would discharge the liability of the concerned post office, it will not oust the right of those who are beneficiaries of the sums as deposited, whether under the law of succession or otherwise. The nominee retains the money for the benefit of those persons who are entitled to it either by virtue of a testament, such as a Will and / or on account of law of survivorship as in the case of intestate succession.

10.7 There is no scope under the provisions of the 1873 Act, to set up a case of a third statutory testament, as was sought to be suggested by the counsel for the respondents, based on the language of Section 4(1) of the 1873 Act.

11. At this stage, I may note one another submission that was sought to be raised before me, which is that, Will dated 15.08.2011 has not been probated. It may be relevant to note that in Delhi probate of Will is not compulsory. (See : *Santosh Kakkar & Ors. V. Ram Prasad and Ors.*, 71 (1998) DLT 147)

12. In these circumstances, the petitioners, in my view, are right in saying that the moneys lying credited in the aforementioned accounts should be paid in accordance with the request made in the two communications, both of which, are dated 23.01.2012.

12.1 In the narration of facts set out hereinabove, I had indicated that petitioner no.2 had made a specific request that the amount standing to the credit of the deceased Ms Vimala Devi Bachawat, qua which, he was appointed as a nominee, be paid to petitioner no.1. With this letter, petitioner no.2 had appended a disclaimer form of his father i.e. Dr. Ashok Bachawat, relinquishing his claim to the moneys lying in the said accounts. Moreover, in the petition, it is specifically averred that there are no other legal heirs. Petitioner no.1 by a letter of even date i.e. 23.01.2012, made a similar request, that is, the money lying in the aforementioned accounts be paid to him.

13. Having regard to the above, I find no difficulty in the respondent no.3 directly paying the money lying in the said accounts to petitioner no.1. It is ordered accordingly. The respondents will issue a cheque in favour of petitioner no.1 in respect of amounts lying credited both, in the SB account and the SCSS account. The amount reflected in the cheque will include interest which, the respondents, in any event have conceded is payable on the money deposited with them; an aspect which is evident upon perusal of the averments made in paragraph 2(f) of their affidavit.

13.1 Consequently, interest at the rate of 9% per annum will be paid from the time of opening of the account till the date of death of Ms Vimala Devi Bachawat. Thereafter, interest at the rate of 3.5% per annum will be paid upto 30.11.2011, and at the rate of 4% per annum, from 01.12.2011 till the date of payment. This, according to the respondents, is in consonance with

notification dated 28.07.2010, issued by the Ministry of Finance, Government of India; whereby Senior Citizens Saving Scheme Rules, 2010 have been framed.

14. The writ petition is accordingly disposed of in the aforesaid terms, with costs quantified at Rs. 7,500/-. Respondents will pay costs to the petitioner within a period of one week from today.

RAJIV SHAKDHER, J

JUNE 30, 2015

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