

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.19013 of 2013

and

M.P.Nos.1 and 2 of 2013

Dr.Surendra Ranganath,
S/o Late Ranganath S.Iyengar,
Executor of the Estate of
Late Padma Krishnaswamy,
Flat No.GB, Sankalp Orchid Apt.,
No.2961, New No.D-23,
5th Main Road, V.V.Mohalla,
Mysore-570 002. .. Petitioner

Vs.

1. The Branch Manager,
State Bank of India,
15 Suffren Street,
Pondicherry-605 001.

2. Mr.S.Krishna Kumar,
S/o Late Rangaswamy S.Iyengar,
No.17, Kailas Nivas No.2,
R.B.Mehta Road,
Ghatkopar (East),
Mumbai-400 077.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents herein jointly and severally to refund/repay the amount lying in Account bearing No.10831322350, estimated to be Rs.26,72,000/- and Term Deposit Bond Ledger A/c.No.221 of a sum of Rs.6,00,000/- plus interest, which is illegally withheld by them and belonging to the Estate of the Late Padma Krishnaswamy to the petitioner herein together with applicable interest, and permit the petitioner to open the locker hired by Late Padma Krishnaswamy from the first respondent for a proper administration of the Estate of the Late Padma Krishnaswamy.

For petitioner : Mr.M.Aravind Subramaniam
For respondents : Mr.Om Prakash, Senior Counsel for
M/s.Ramalingam Associates for R-1
Mr.K.Sukumaran for R-2

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents herein jointly and severally to refund/repay the amount lying in Account bearing No.10831322350, estimated to be Rs.26,72,000/- and Term Deposit Bond Ledger A/c.No.221 of a sum of Rs.6,00,000/- plus interest, which is illegally withheld by them and belonging to the Estate of the Late Padma Krishnaswamy to the petitioner herein together with applicable interest, and permit the petitioner to open the locker hired by Late Padma Krishnaswamy from the first respondent for a proper administration of the Estate of the Late Padma Krishnaswamy.

2. The petitioner is the Executor of the Will dated 30.05.2000 executed by Late Padma Krishnaswamy and he has approached this Court contending that Late Padma Krishnaswamy, during her lifetime, has executed a Will and as to how the property(ies) have got to be distributed to the beneficiary(ries). The Will dated 30.05.2000 was probated on 03.01.2013. According to the petitioner, there is an Estate Account and if any direction is given, after the amount is returned by the second respondent to the Estate, as per the Will, the amount will be disbursed to the beneficiaries, either by Demand Draft or by Pay Order or through RTGS or by such other manner, in order to enable the beneficiaries enjoy the fruits of the said Will.

3. The second respondent submitted that being the nominee, nominated by Late Padma Krishnaswamy, he has taken all the monies lying with the first respondent-SBI to an extent of Rs.28,38,420/- and the same is in his custody. However, he contended that the Writ Petition is not maintainable and the remedy lies only before the appropriate Civil Court.

4. Learned Senior Counsel representing the first respondent-SBI submitted that it is dispute between the writ petitioner and the second respondent and that when there is a nominee nominated by any person, after the lifetime of the propounder of the Will, it is the duty cast upon the Bank to pay the amount to the nominee, and if there is any dispute, it is for the aggrieved person to claim it from the beneficiaries and not from the Bank. He further contended that there is a locker of the deceased bearing No.G.51 and that the same was opened on 16.07.2015 in the presence of the petitioner and the second respondent and that there are inventories taken and they are willing to abide by the order of this Court with regard the articles in the said locker bearing No.G.51

5. It is not in dispute that the petitioner is the Executor of the Will and the Will has been probated and it is an admitted fact that the second respondent has received the entire amount from the first respondent-Bank excepting the belongings in the said locker, for which, inventory had been taken. When it is an admitted fact that the second respondent is the nominee and that he has collected the amount from the first respondent, and that the Will that has been executed, has been probated, and that the petitioner is the Executor of the Will, which is not in dispute, the contention of the second respondent that the petitioner will have to approach the Civil Court, cannot be accepted. The nominee steps into the shoes of the depositor after his death and it clothes him with exclusive right with regard to the money lying in the deposit. It gives all the rights of the depositor so far as the deposit amount is concerned, and by no stretch of imagination, makes the nominee the owner of the money lying in deposit. This principle has been laid down by the Supreme Court in the decision reported in 2010 (10) SCC 671 (Ram Chander Talwar Vs. Devender Kumar Talwar). Thus, the nominee is holding the money in trust on behalf of the legal heirs/beneficiaries.

6. Admittedly, in the present case on hand, the petitioner is not only the Executor of the Will, but is also one of the beneficiaries. Hence, I find much force in the contentions of the learned counsel for the petitioner and relegating him to the alternative forum, is not going to yield any fruit. Hence, this Court allows this Writ Petition, with a direction to the second respondent to refund the entire amount of Rs.28,38,420/- (Rupees twenty eight lakhs thirty eight thousand four hundred and twenty only) received from the first respondent-SBI within a period of 45 days from the date of receipt of a copy of this order, to the Estate of the deceased, failing which, the second respondent will have to pay interest @ 9% per annum from the date of his receipt of the amount from the Bank and the date of disbursement may be informed to the petitioner by the Bank in writing.

7. With regard to the locker bearing No.G.51, the belongings in the locker shall be handed over to the petitioner after taking necessary acknowledgement in terms of the rules and regulations as prescribed by the first respondent-Bank. When once the amount is received by the Estate, the entire amount (by pay order / Demand Draft) shall be paid to the beneficiaries as per the Will, dated 30.05.2000 which was probated on 03.01.2013.

No costs. The Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

CS

+ 1 cc to Mr.K. Sukumaran, Advocate Sr.68917
+ 2 ccs to M/s. Ramalingam & Associates, SR.69128
+ 1 cc to Mr. Aravind Subramaniam, Advocate Sr.69228

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CS-V
EU(10/10/2017)



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