IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.19632 of 2013

1. Pamela Moses
2. Manoj Moses ..Petitioners

Vs

1. State Bank of India
   Rep.by its Branch Manager
   Saibaba Colony,
   Coimbatore - 641 011.

2. S.W.Vijayakumar (Deceased)

3. Anitha ..Respondents

[R3-Substituted as LR of the Deceased R2-S.W.Vijayakumar as per the order of this Court dated 08.01.2018 in MP.No.1/2015 in WP.No.19632/2013]

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the first respondent to disburse the amount, with interest accrued, from the accounts i.e. SB A/C 11012996958 and Term Deposit A/C 30228630351, to the petitioners, to the exclusion of the second respondent.

For Petitioners : Mr.N.Rajan
For Respondents : Mr.S.Sethuraman, for R1
: No appearance, for R3



ORDER

Heard the learned counsel for the petitioners and the learned counsel for the first respondent. None represents the third respondent.

2. The petitioners have come forward with this writ petition for issuance of a writ of mandamus to direct the first respondent to disburse the amount with interest accrued from the accounts i.e. SB A/C 11012996958 and Term Deposit A/C 30228630351 to the petitioners and exclusion of the second respondent.

3. According to the petitioners, the first petitioner along with her aunt Sarojini Williams were holding four accounts in the first respondent bank on "either or survivor" basis. While so, the first petitioner's aunt passed away on 04.08.2007 leaving behind her only son, the second respondent herein as her legal heir.

4. It is further stated that after the demise of petitioner's aunt, the entire amount standing to the credit of the accounts devolved upon her as survivor. But the first respondent bank declined to disburse the amount to the petitioners on the ground that the second respondent instituted a suit in O.S.No.336 of 2008 before the Additional District Munsif Court, Coimbatore against the petitioners and the first respondent. Hence, the present writ petition.

5. The first respondent has filed a counter affidavit admitting that the first petitioner and one Sarojini Williams were having Savings Account with mandate "either or survivor". After the death of Sarojini Williams was informed to the bank on 21.08.2017, the respondent bank permitted to add the second petitioner in the joint account to operate the accounts. Subsequently, the second respondent, son of Sarojini Williams approached the first respondent and claimed a share in the account and also filed a suit in O.S.No.336 of 2008. Hence, the first respondent was not able to settle the amount and directed the petitioners to get appropriate orders from the Court.

6. The learned counsel for the petitioners submitted that as per the guidelines issued by the Reserve Bank of India, Term Deposits in the joint account with operating instructions "either or survivor" can be permitted to be withdrawn by the survivor, once the deposits got matured. In the instant case, admittedly the deposits were already matured and the first respondent has to pay the entire amount to the petitioner.

7. The learned Standing Counsel for the first respondent-Bank submitted that since the suit filed by the second respondent was pending, the bank directed the petitioners to get orders from the competent authority and now the suit has been dismissed as withdrawn, the first respondent bank is ready to disburse the amount to the petitioners, as per the guidelines issued by the Reserve Bank of India.

8. The guidelines issued by the RBI, dated 23.08.2012, reads as follows:

> "2. In this connection, it is clarified that if fixed / term deposit accounts are opened with operating instructions 'Either or Survivor' the signatures of both the depositors need not be obtained for payment of the amount of the deposits on maturity. However, the signatures of both the depositors may have to be obtained, in case the

deposit is to be paid before maturity. If the operating instruction is 'Either or Survivor' and one of the depositors expires before the maturity, no pre-payment of the fixed/term deposit may be allowed without the concurrence of the legal heirs of the deceased joint holder. This, however, would not stand in the way of making payment to the survivor or maturity."

9. In the light of the above submissions and also taking note of the guidelines issued by the Reserve Bank of India, in the considered opinion of this Court, the petitioner is entitled to succeed in this writ petition. In fine, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

pvs

+ 1 cc to Mr. G. Sethuraman, Advocate Sr.42039
+ 1 cc to Mr.D. Ravi, Advocate Sr.42139

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(CS-VII)
EU(13/07/2018)