HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.12668 of 2012

ORDER:

The petitioners seek a Writ of Mandamus declaring the action of respondent-bank in not permitting the 1st petitioner to operate locker No.153 belonging to Late K.Prabhakaran and requiring the petitioners to produce legal heir certificate as arbitrary, illegal and consequently direct the respondent-bank to permit the 1st petitioner to open Locker No.153, Raj Bhavan Road, Somajiguda Branch, HDFC bank, Hyderabad and take custody of the contents.

2) The 1st petitioner is the wife and petitioners 2 to 4 are the children of deceased—Late K.Prabhakaran. Their case is that Prabhakaran was working in Motorola India Pvt. Ltd., he died on 14.10.2007 due to Cardiac failure leaving behind petitioners as his legal heirs. During his lifetime Prabhakaran opened two Savings Bank Accounts with the respondent-bank and it was also alleged, he also opened Locker No.153 in the HDFC bank of Somajiguda Branch, Hyderabad. After his death when the petitioners approached the respondent bank for transferring the locker in favour of 1st petitioner, for taking custody of the contents therein, the respondent bank insisted for production of legal heir certificate. Since Prabhakaran mentioned 1st petitioner as his nominee in his Savings Bank Account maintained in Kukatpally Housing Board branch, there was no ambiguity as to her status as his wife and though this fact was brought to the notice of the respondent, it did not heed.

3) The petitioners under a mistaken impression that a succession certificate was required to operate the bank locker, filed C.A.No.25/2008 before the Administrator General, High Court of A.P, Hyderabad. The Administrator General appointed an Advocate Commissioner, who took inventory of the articles lying in the locker and assessed their value @ Rs.5,32,350/- and as the value of the articles was more than Rs.2,00,000/- and exceeding his pecuniary jurisdiction, the Administrator General has dismissed the application as withdrawn giving liberty to the petitioners to approach the proper Court. The petitioners later came to know that succession certificate would be issued only in respect of debts and securities of the deceased and since the bank locker was not a debt or security, succession certificate was not required.

Hence the writ petition.

4) Though notice was ordered on respondent bank but none appeared on its behalf. Hence heard learned counsel for petitioners Sri Peri Prabhakar.

5) Learned counsel for petitioners would submit that Late K.Prabhakaran, was a customer of the respondent bank Kukatpally Branch with Account No.3641000021156 wherein 1st petitioner was shown as nominee of the account holder. Prabhakaran was also operating Locker No.153 in respondent bank but he did not nominate anybody. While-so, the account holder died on 14.10.2007 and when the petitioners, who are the LRs of the deceased approached the bank

authorities with a request that since 1st petitioner is the wife of the deceased and his nominee in Savings Bank Account, she may be permitted to operate the bank locker. The respondent authorities did not accord permission but insisted for production of legal heir certificate. Learned counsel would submit that of-late the revenue authorities are not issuing legal heir certificate and in these circumstances, it is difficult to produce legal heir certificate and therefore, considering that the 1st petitioner was already shown as nominee of Late K. Prabhakaran, in his Savings Bank Account, she may be permitted to operate the bank locker and receive the articles, whose inventory was made by the Advocate Commissioner appointed by this Court. He thus prayed to allow the writ petition.

6) The point for determination is:

"Whether there are merits in this writ petition to allow?"

7) **POINT**: The claim of the petitioners is that 1st petitioner is the wife and petitioners 2 to 4 are the minor children of late K.Prabhakaran and that he maintained Locker No.153 with the respondent bank is not in dispute since the respondent has not put up its appearance and filed any counter. Thus it is clear that the petitioners are the legal heirs of late K. Prabhakaran. The particulars obtained by the Advocate Commissioner on the direction of this Court, would show that Prabhakaran maintained Savings Bank Account No.3641000021156 in the Kukatpally Branch of respondent bank and he showed 1st petitioner as her nominee in the said

account. However, Locker No.153 maintained by him with respondent bank is concerned, he did not nominate anyone. Since the petitioners are his legal heirs and as the 1st petitioner is his wife and nominee in respect of Savings Bank Account, in the considered view of this Court, the 1st petitioner is entitled to operate Locker No.153.

8) Now the crucial aspects germane for consideration are:

i) What are the documents to be produced by the petitioners to enable 1st petitioner to operate the locker?

ii) Whether a writ direction can be issued against the private bank?

9) Section 45ZF of the Banking Regulation Act, 1949 deals with the procedure relating to the claims in respect of safety lockers where nomination was not made by the hirers. This Section reads thus:

> *"**45ZF. Notice of claims of other persons regarding safety lockers not receivable**.—No notice of the claim of any person, other than hirer or hirers of a locker, shall be receivable by a banking company nor shall the banking company be bound by any such notice even though expressly given to it: Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to the locker or its contents is produced before the banking company, the banking company shall take due note of such decree, order, certificate or other authority"*

Thus the above Section says that in respect of the claims made by any person other than the hirer of the locker, the banking company shall entertain such claims upon production of decree, order, certificate or other authority from a Court competent jurisdiction relating to the locker.

The bank locker is not a debt or security within the mischief of Sections 214, 370 and 372 of Indian Succession Act, 1925. In ***Venugopal Loya and others v. Vijayalakshmi Bung and another***[1], it was held thus:

> *"**Para 4**: The plaintiff filed the suit for a declaration that plaintiff No. 1 is entitled to operate the bank's locker that stood in the name of his mother, Suguna Bai. Under Section 370 of the Indian Succession Act, 1925, a succession certificate can be granted only in respect of debts and securities and not for any other kind of property. A succession certificate cannot be granted in respect of ornaments pledged by a deceased with a bank by way of security for the debt which the bank had advanced. It is not a debt due from the bank. Also, it cannot be granted in respect of ornaments kept in a deposit locker in a bank."*

Therefore, petitioners cannot be driven to civil court for obtaining succession certificate to enable them to operate the bank locker. It is true that the petitioners may file a civil suit seeking suitable reliefs, however, it is an expensive and time consuming process. Further, the peculiar facts of this case are that the deceased did in the year 2007 and the petitioners prosecuted unfruitful proceedings in C.A.No.25/2008 for some time before the Administrator General, High Court of Andhra Pradesh, Hyderabad and later filed the instant writ petition. Therefore, having regard to the facts and circumstances, it is not apposite to drive the petitioners at this juncture to file a civil suit. As the petitioners are admittedly the legal heirs of the deceased—hirer of the locker, in my considered view, the 1st petitioner on behalf of rest of the petitioners can be permitted to operate the bank locker upon production of a notarised

[1] MANU/AP/0079/1991

indemnity bond equivalent to the value of the articles as on the date of this order, whose particulars are noted down in the inventory made by the Advocate Commissioner appointed by this Court.

10) Coming to the maintainability of the writ petition, generally writ jurisdiction is not exercisable against private banks, private companies and other private organisations as held by the Apex Court in ***Federal Bank Limited v. Sagar Thomas and others***[2]. However, in the said decision an exception is provided as follows:

> *"**Para 28:** Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to."*

---
[2] MANU/SC/0769/2003 = AIR 2003 SC 4325

In the instant case, the grievance of the petitioners is that the respondent authorities by giving a go-by to the statutory provisions contained in Section 45ZF of Banking Regulation Act, directed the petitioners to produce legal heir certificate, for which no specified authority is designated. It should be noted that Section 45ZF of Banking Regulation Act does not specify legal heir certificate but it only says that the claimant shall produce decree, order or certificate or other authority from a court of competent jurisdiction. Since the instruction of the respondent bank is in violation of Section 45ZF, a direction in the nature of mandamus can be issued.

11) In the result, this writ petition is allowed and the respondent-bank is directed to permit the 1st petitioner to operate Locker No.153 hired by late K.Prabhakaran, upon petitioners producing this order and a notarised indemnity bond for a sum equivalent to the value as on date to be estimated by bank appraiser of the articles in the locker whose inventory was made by the Advocate Commissioner appointed by this Court. The entire exercise shall be completed within three (3) weeks from the date of receipt of a copy of this order by respondent. The respondent-bank shall pay cost of Rs.5,000/- (Rupees five thousand only) to the petitioners.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 19.09.2018

Note: Issue CC in three days.

(b/o)

scs