

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6850/2019

(DEVENDRA BHAGWATPRASAD CHAUDHARI **VERSUS** VIRENDRA BHAGWATPRASAD CHAUDHARI
& OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Mohd. Ateeque, counsel for petitioner.
Shri Nihar A. Dharmadhikari, Advocate with Shri A.C. Dharmadhikari, counsel
for R-1 to 8.

CORAM : A.S. CHANDURKAR, J.

DATE : NOVEMBER 20, 2019.

In lieu of notice for final disposal issued earlier, the learned counsel for the parties have been heard.

The petitioner is the original plaintiff who had filed suit for declaration that being nominee of the fixed deposit receipts that were standing in the name of his father he alone was entitled to receive those amounts to the exclusion of other legal heirs. He therefore filed a suit for declaration in that regard. The other legal heirs filed proceedings for grant of succession certificate. The trial Court by its common judgment dismissed the suit filed by the plaintiff and thereafter issued a succession certificate recognizing the rights of the legal heirs of Bhagwatprasad. The plaintiff alongwith the defendant nos.1 to 6 were held entitled to 1/8th share each while the defendant nos.7 and 8 were held entitled for 1/16th share each. The plaintiff being aggrieved filed an appeal challenging that judgment. He also filed an application seeking to restrain the defendants from withdrawing the amounts in question during the pendency of the appeal. By the impugned order, that application has been rejected.

Shri M. Ateeque, learned counsel for the petitioner submitted that considering the nature of relief granted by the trial Court, the Appellate Court was not justified in rejecting the application below Exhibit 10 without imposing any condition on the respondents. If the amounts in deposit are withdrawn by the respondents, the petitioner would be left with no remedy in case the appeal is allowed. He therefore submits that the interest of the petitioner deserves to be protected during pendency of the appeal.

Shri Nihar Dharmadhikari, learned counsel for the respondents supported the impugned order submitted that the reliance placed on the provisions of Section 30 of the Maharashtra Co-operative Societies Act, 1960 is misplaced. The said provision is applicable only for the purposes of transfer of membership of a co-operative society. Even if the petitioner had been named as nominee by the deceased he would not be entitled to claim the amounts of fixed deposit to the exclusion of the legal heirs. In that regard, he referred to the decisions in *Ram Chander Talwar & Another Versus Devender Kumar Talwar & Others* [(2010) 10 SCC 671] and *Ramdas Shivram Sattur Versus Rameshchandra @ Ramchandra Popatlal Shah & Others* [2009(4) Mh.L.J. 551]. He therefore submits that no interference is required with the impugned order.

On hearing the learned counsel for the parties, it is clear that the petitioner claims entitlement to the amounts under the fixed deposit receipts on the basis of his name being shown as nominee by the deceased. By virtue of being a nominee, he would not have an absolute right to the amounts lying in deposit. Those amounts would form part of the estate of the deceased and hence it cannot be said that by virtue of Section 30 of the said Act the petitioner is justified in supporting the application at Exhibit 10.

In the light of the law as laid down in the aforesaid decisions, I do not find any reason to interfere with the impugned order. The respondents shall however file an undertaking before the Appellate Court within a period of eight weeks from today that in case the appeal as filed by the petitioner is allowed they would be liable to refund the amounts received by them. The proceedings in the appeal are expedited.

The Writ Petition is disposed of accordingly. No costs.

JUDGE

APTE