IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.14948 of 2018

Mrs.M.Latha .. Petitioner

-vs-

1. The Regional Manager
Union Bank of India
139, Prakasam Road
Union Bank Bhavan
III Floor, Broadway
Chennai 600 108

2. The Chief Manager
Union Bank of India
TSK Nagar Branch
R-32 TNHB Commercial Complex
Mogappair, Chennai 600 050 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to direct the respondents to permit the petitioner, who had been duly appointed as a sole nominee, to withdraw the closing balance amount available under the credit of the SB account 497502010068072 of late Sethuraman in terms of sub-section (2) of Section 45-ZA of Banking Regulation Act 1949.

For Petitioner :: Mr.V.S.Jagadeesan
For Respondents :: Mr.Srinath Sridevan

ORDER

Mrs.M.Latha, wife of Mohan, has come to this Court seeking issuance of a writ of mandamus under Article 226 of the Constitution of India to direct the respondents to permit the petitioner, who has been duly appointed as a sole nominee, to withdraw the closing balance amount available under the credit of the saving bank account of late Sethuraman in terms of sub-section (2) of Section 45-ZA of Banking Regulation Act 1949.

2. The petitioner's father is said to have developed the habit of drinking and at one point of time, he became an addict. The earnest steps taken by the petitioner and others to reform the petitioner's father ended in vain. When the petitioner and others requested him to mend his ways, he never changed his style of living. While the

petitioner's father used to visit the houses of his daughters, on one such occasion, on 7.11.2010, when he had been to his eldest daughter's house Kalavathi situated at No.105/30, Bharathiyar Street, Devar Nagar, Padi, Chennai, the petitioner and her other brothers and sisters were under the impression that he would return as usual. But he never turned up. After searching him everywhere and finding him missing, a police complaint was also lodged and finally, the Police also issued a non-traceable certificate on 24.1.2018. As he was also maintaining a savings bank account No.497502010068072 with Union Bank of India, Mogappair Branch, the petitioner has been nominated as a nominee. Now the account has become idle and nobody is operating the said account. On verification, it was found that Rs.84,361/- is still lying in his account. Therefore, a representation has been given on 11.1.2018 seeking permission to withdraw the amount which is lying in his account. According to the petitioner, her other sisters have also settled in and around Chennai after their marriage. As far as her two brothers are concerned, namely, Rajendran and Shakthivel, they have also settled in Kumbakonam and never cared about the missing father. Hence, the respondent-Bank should have considered the representation dated 11.1.2018, which has not been done. The learned counsel for the petitioner also, referring to sub-section (2) of Section 45-ZA of the Banking Regulation Act, states that as a nominee, the petitioner is entitled to receive the money lying in the account of the depositor. Therefore, a direction be issued.

3. Mr.Srinath Sridevan, learned counsel for the respondents, referring to the Apex Court judgment in Ram Chander Talwar and another v. Devender Kumar Talwar and others, (2010) 10 SCC 671 enclosed in the typedset of papers relied on by the petitioner, stated that Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. But by no stretch of imagination the said section makes the nominee the owner of the money lying in the account, because the Banking Regulation Act clearly makes it clear that all the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed.

4. It is, therefore, necessary to extract paragraphs 4 & 5 of the judgment of the Apex Court in Ram Chander Talwar and another reported in (2010) 10 SCC 671, as follows:-

> "4. Sub-section (2) of Section 45-ZA reads as follows:
> "45-ZA.

(2) Notwithstanding anything contained in any other law for the time b eing 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 of 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."

5. Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed."

5. In the light of the above, the writ petition stands disposed of directing the respondent-Bank to issue notice to all the legal heirs shown in paragraph-5 of the affidavit filed by the petitioner within a period of one week from the date of receipt of a copy of this order and upon hearing them, it is for the respondent-Bank to consider the claim on merits and do the needful within a period of four weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ss
To

1. The Regional Manager
   Union Bank of India
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   Union Bank Bhavan
   III Floor, Broadway
   Chennai 600 108

2. The Chief Manager
   Union Bank of India
   TSK Nagar Branch
   R-32 TNHB Commercial Complex
   Mogappair
   Chennai 600 050

+1cc to Mr.Srinath Sridevan, Advocate SR.No. 28175
+1cc to Mr.V.S.Jagadeesan, Advocate SR.No. 26615

W.P.No.14948 of 2018

A.SK(12/04/2019)