BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:13.12.2019

CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)No.24421 of 2019

U.Selvamani ... Petitioner

Vs.

1.D.S.Bala Murali

2.The Manager,
2215/1548, Urban Cooperative Bank Limited,
68, Salaitheru,
Ramanathapuram - 623 533. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the second respondent to conduct a personal hearing based on the Petitioner's written representation on 14.8.2019 to the second respondent to find out the bonafide of the Petitioner's claim over the Fixed Deposits and Savings Account Balance Amount after seeing her documents.

For Petitioner : Mr.R.Muruga Boopathy

For Respondent-1 : Mr.D.Balamuruga Pandian

For Respondent-2 : Mr.M.Rajarajan
Government Advocate

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus directing the second respondent to conduct a personal hearing based on the Petitioner's written representation on 14.8.2019 to the second respondent to find out the bonafide of the Petitioner's claim over the Fixed Deposits and Savings Account Balance Amount after seeing her documents.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The limited scope in the Writ Petition is for a direction to the second respondent/Urban Co-operative Bank Limited, Ramanathapuram to consider the representation of the Petitioner, dated 14.8.2019 to conduct a personal enquiry over the claim of the Petitioner on the Fixed Deposits and Savings Account in the second respondent/Bank left by her deceased husband.

4.The Petitioner's deceased husband one Ulaganathan was employed in Ramanathapuram Head Post Office as Grade-D employee. The sister's son of the deceased Ulaganathan is also working in the same Office. It appears that there was estranged relationship between the Petitioner and her husband Ulaganathan and therefore, he has nominated the first respondent herein, who is his sister's son, as nominee in many of the Fixed Deposits and other Savings Bank Accounts. In some of the accounts, it is stated that it is in the joint names of the deceased Ulaganathan and first respondent as Either or Survivor Account. The husband of the Petitioner died on 30.7.2018, after which, she came to know about the deposits in the second respondent/Bank. Though she is a legal heir of the deceased Ulaganathan, since nomination has been made by the deceased in all his accounts, it is only the nominee who can receive the amount as a custodian of the same. In this regard, the judgment of the Honourable Supreme Court in the case of ***Smt.Sarbati Devi and another .vs. Smt. Usha Devi reported in AIR 1984 Supreme Court, 346*** may be adverted to and paragraph No.12 of the above decision reads as under:

> ''12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in Fauja Singh's case (supra) and in Mrs. Uma Sehgal's case (supra) do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of section 39 of the Act and hold that a mere nomination made under section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the

amount, on the payment of which the insurer gets a valid discharge of its liability under the policy, The amount; however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.''

5.The word nominee indicates that the person who has been nominated is only authorized to receive the amount from the Bank or insurer in order to discharge the Bank. The amount in the hands of the nominee is not to be disbursed, if there is any claim by the legal heirs of the deceased Account-holder and same may be assured in accordance with the law of succession governing them. In other words, the money that may be disbursed to the nominee does not vest with the person and he is holding it on trust, on behalf of other legal heirs.

6.Therefore, the second respondent is directed to disburse the amount to the first respondent, the money saved by the deceased husband of the Petitioner Ulaganathan. The money that is received by the first respondent in his capacity as nominee of deceased Ulaganathan should not be disbursed, without satisfying the claims of the legal heirs of the deceased Ulaganathan.

7.With the above directions and observations, the Writ Petition stands disposed of.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn

To

The Manager,
2215/1548, Urban Cooperative Bank Limited,
68, Salaitheru, Ramanathapuram - 623 533.

+1 CC to M/s.M/S.R.MURUGABOOPATHY, Advocate (SR-105050[F] dated 16/12/2019)

ORDER MADE IN
W.P(MD)No.24421 of 2019
13.12.2019

JMN(21.01.2020) 3P : 3C