IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.31608 of 2015

M.Subramanian ... Petitioner

Vs

The Branch Manager,
Canara Bank,
Adambakkam,
Chennai-600 088. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent made in his proceedings Reference No.Death Claim/11/2013, dated 21.11.2013 and quash the same and consequently direct the respondent to disburse the amount deposited by petitioner's brother Muthiah Gopal @ Gopal, which is lying in Term Deposit Account No.2628404003238 and Savings Bank account No.2628101000591 to the petitioner.

For Petitioner : Mr.S.Angamuthu

For Respondent : Mr.Raghunathan
for M/s.T.S.Gopalan & Co.

O R D E R

This writ petition is heard through Videoconferencing, on account of the COVID-19 pandemic situation.

2. The petitioner has laid challenge to the proceedings of the respondent dated 21.11.2013 in Reference No.Death Claim/11/2013, dated 21.11.2013 and sought for a consequential direction to the respondent to disburse the amount deposited by his brother Muthiah Gopal @ Gopal, which is lying in Term Deposit Account No.2628404003238 and Savings Bank account No.2628101000591 to him.

3. The petitioner is the brother of one deceased Muthiah Gopal. The deceased was married to one Mrs.Lakshmi, who pre-

deceased him on 07.08.2008. The said Muthiah Gopal was the customer in the respondent Bank having Savings Bank Account bearing No.2628101000591. He had also deposited a sum of Rs.5,00,000/- (Rupees five lakhs only) as Fixed Deposit on 17.09.2012 in Term Deposit No.262810102396 for a period of six months with auto renewal option. The brother of the petitioner was admitted in hospital for various ailments, when he was staying with the petitioner. The petitioner claims to have taken care of the deceased till the time of his death. The said Muthiah Gopal died on 28.10.2012. There were no children for the deceased.

4. The petitioner, being the only sole legal heir of the deceased Gopal, applied and obtained Legal Heirship Certificate on 25.05.2013 in Proceedings No.Pa.Mu.A1/617/2013. On the strength of the Legal Heirship Certificate, he approached the respondent Bank requesting them to disburse the amount lying in the Fixed Deposit as well as the Savings Bank Accounts of the deceased Gopal. Despite several requests, the respondent Bank was not willing to release the amount in favour of the petitioner. Hence, the petitioner filed W.P.No.276 of 2015 seeking a mandamus to the respondent Bank to consider the request of the petitioner, which was allowed on 08.01.2015. However, the respondent Bank had claimed that it had sent a response dated 21.11.2013, which according to the petitioner, is an anti-dated one, stating that with respect to the Term Deposit No.KDR 2628404003238, a nomination has been registered in the name of Lala Deep and with respect to the Savings Bank Account, one Smt.Josephine Clement has been registered as nominee by the deceased. The said letter is impugned in this writ petition.

5. The respondent filed a counter-affidavit dated 13.09.2019 claiming that the deceased and his wife opened an account with the respondent Bank on 17.09.1998 showing their address as No.27, Telephone Colony, 2nd Street, Adambakkam, Chennai-600 088, and at the time of opening the account, though there was a provision for nomination, the same was not done by the depositor and only subsequently, when the branch account migrated to Flex Cube Software, the account of the customers were renumbered and in the computerized records, the nomination details have been shown, as per which, Ms.Josephine Clements was shown as the niece of the customer and the address of the nominee was shown as MIG-60, Madhavadhara VODA Colony, Marriyapalam PO, behind REB Office, Vishakapattinam, Andhra Pradesh. Similarly, in the Fixed Deposit account, one Lala Deep is shown as nominee, who is stated to be the nephew without mentioning his address. It is stated that the deceased Gopal was a retired Customs officer working in Vishagapattinam and Chennai and therefore, the Bank has got no reason to doubt that the deceased had nominated such persons, one of whose address is in Vishagapattinam. The Bank

further has stated that the in tune with the guidelines of the Reserve Bank of India and policy of the Bank regarding the payment of money standing to the credit of the deceased depositors, where nomination is registered, the same have to be settled only to the nominee, unless and otherwise, a Court order is produced to any other effect and accordingly, since the deceased account holder had already nominated persons for receiving the money in the said accounts, the respondent Bank refused to release the amounts in favour of the petitioner.

6. Heard both sides and perused the records.

7. The only question that arises for consideration is whether the petitioner is entitled to receive the amount in deposit standing in the name of his deceased brother Gopal, when already nominations are listed ?

8. Learned counsel for the petitioner would argue that the petitioner and his deceased brother belong to the Hindu religion, but the nominations are in the names of the persons, who belong to a different religion. The learned counsel further had stated that the nominees may be the erstwhile colleagues of the deceased and despite their best efforts, the whereabouts of the nominees are not traceable now. The peculiar situation in this case is that the original account holder is dead and his nominees are not heard of and the legal heir is trying to receive the money.

9. It is well-settled principle that the nomination does not amount to beneficial ownership and at times a nominee, who is not a sole legal heir, merely receives or holds the amount on behalf of all the legal heirs of the deceased. The amount received by the nominee is only held as a trustee on behalf of the rightful legal heirs for holding the money till the legal heirship is decided.

10. In this case, the learned counsel for the petitioner argued that the nominees registered in the above accounts have not made any claim so far. However, nothing on record to show that even the petitioner had made any efforts to trace them, at least for the purpose of receiving the amounts lying the above accounts from the Bank.

11. From the perusal of the records, it can be seen that there is no efforts taken by the petitioner for bringing the nominees before the respondent Bank or even to state that they are not traceable. The learned counsel for the respondent Bank also does not dispute that the petitioner is the legal heir of the deceased, being the only brother, as admittedly, the deceased had no issues. The Bank also cannot retain the amount,

when the legal heir is making a claim. But the only impediment is that the deceased had made nominations.

12. At this juncture, it is relevant to state that while considering Section 45-ZA of the Banking Regulation Act, 1949, the Hon'ble Supreme Court in Ram Chander Talwar V. Devender Kumar Talwar, (2010) 10 SCC 671, has held 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 being 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."
>
> (emphasis added)
>
> 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."

13. In view of the above laid principle, it is crystal clear that the nominee is only a person authorized to receive the amount belonging to the original depositor, after the death of the holder. The nominee can only retain the amount for the benefit of the person(s), who is (are) entitled to it, by

applying the law of succession.

14. In the case on hand also, the nominees have not made nay claim, after the death of the depositor. It is also stated by the petitioner that the nominees are not available in the addresses given. As the nomination was not made on the date of deposit and it was added only as a matter of procedure subsequently, during the computerization of the bank transactions of the respondent Bank, it raises a doubt as to whether the depositor really intended to name the said two persons as nominees.

15. The purpose of nomination is only for the Bank to get discharged of its liability by handing over the amount to the nominee and the nominee is expected to distribute the monies as per the law of succession applicable to the parties/legal heir (s) of the deceased.

16. In view of the above discussion, the respondent Bank is directed to release the sums lying to the credit of the deceased deposit holder Gopal, in the process of discharging their liability, to the petitioner, who claims to be the sole legal heir of the deceased. It is open to the Bank to direct the petitioner to comply with any other formality, like executing the indemnity bond etc. by the petitioner.

17. With the above directions, this writ petition is allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gg
To
The Branch Manager,
Canara Bank,
Adambakkam,
Chennai-600 088.

SAI(CO)
RMP(01/10/2020)