

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
03~12~2020	11~12~2020

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.No.2468 of 2020 in O.P.No.953 of 2018

Dr.Vidyaa Hari Iyer

... Applicant

.Vs.

1. M/s.Sundaram Finance Limited,
Incorporated under the Indian Companies Act, 1913
and having its registered office
at No.21 Pattullos Road, Chennai – 600 002.

2. Mr.Nishanth Ramesh

... Respondents

Prayer: Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC for direction directing the first respondent to disburse to the credit of the applicant herein the monies lying in FDR No.D629907 (L936473) together with interest at 18% p.a. from the date of maturity, within a time frame as fixed by this Court.

For Applicant : Mr.Mohan
for M/s.Vijayalakshmi Rajarathnam

For respondents : Mr.Suresh – R1

Mr.Arvinth Pandian (SC)
for Mr.Karthikeyan Anbazhagan - R2

ORDER

This application has been filed by the applicant to direct the first respondent to disburse to the credit of the applicant herein the monies lying in FDR No.D629907 (L936473) together with interest at 18% p.a. from the date of maturity, within a time frame as fixed by this Court.

2. The contention of the applicant is that after the death of her husband, the first respondent failed to release the deposit made by her husband on the ground that the second respondent was the **nominee**. The applicant has filed an Original Petition in O.P.No.953 of 2018 for issuance of Succession Certificate. The Court by an Order dated 26.12.2019 issued the Succession Certificate. Despite the certificate produced, the first respondent did not release the amount. It is further alleged by the applicant in the application that her husband had made various fixed deposits. After the death of her husband, she was driven out of her

matrimonial home. Her in-laws and other nephews and nieces tried to usurp the entire amount. Hence, this application has been filed to seeking direction to release the deposit amount held by her husband.

3. It is the contention of the first respondent that the second respondent is the nominee, has objected for release of the amount. They have filed an interpleader suit before the City Civil Court for decision.

4. Whereas the second respondent would contend that the succession certificate has been obtained without making him as a party. There are 8 writ petitions pending in respect of other deposits made by the husband of the applicant, wherein the other relatives have been appointed as nominees. When the writ petitions are already pending, the succession certificate has been obtained. Therefore, the same is not binding on them. It is his further contention that the conduct of the applicant's husband making all other relatives as nominees clearly proves that he has made gift of the money deposited in the bank to each of his nephews and nieces. Hence, it is his contention that when the suit filed by the first respondent is pending, direction cannot be ordered in this application. Only the

nominee is entitled to receive the money. The right of the applicant has to be decided only in the suit. Hence, prayed for dismissal of this application.

5. The learned counsel Mr.Mohan, appearing for the applicant submitted that despite the certificate granted in favour of the applicant, who is the only legal heir of her husband late Hari, the first respondent has not paid the amount on the ground that the second respondent is the nominee. It is his contention that once succession certificate is granted under Chapter X of the Indian Succession Act, the first respondent has to necessarily pay the deposit amount to the applicant. Hence, submitted that merely because some writ petitions are pending in respect of other deposits, the same cannot be a ground to non suit the applicant. It is his further contention that taking advantage of the fact that the applicant is a widow, the family members in the matrimonial home tried to grab the money left by her husband. In fact a suit has also been filed claiming huge damages preventing her from seeking any redressal. This Court has heavily come down on the plaintiff in the above suit and dismissed the above suit. All these facts clearly indicate that only for the purpose of defeating the rights of the applicant, all the measures have been taken and interpleader suit has also been filed by the first respondent with the

connivance and collusion with the second respondent. Hence, submitted that she being the class-I legal heir, she is entitled for release of the amount. In the event of the second respondent succeeding in the interpleader suit, the applicant offers her share declared in C.S.No.899 of 2017 as security towards the amount and there can be charge over her share in the above immovable property. Hence, submitted that the applicant is entitled to a direction to the first respondent to release the amount. In support of his contentions, he relied on the following judgments :

Sarbati Devi and another Vs. Usha Devi reported in **1984**

(1) SCC 424

Vishin N. Khanchandani Vs. Vidya Lachamandas

Khanchandani reported in **2000 (6) SCC 724**

Ram Chander Talwar Vs. Devender Kumar Talwar

reported in 2010 (10) SCC 671

Skahti Yezdan Vs. Jayanand Jayant Salgaonkar reported

in 2016 SCC OnLine Bom 9834

P.Panchali Vs. Tamilnadu Generation and Distribution

Corporation Ltd. reported in **2017 SCC OnLine Mad 9191**

Surendra Ranganth (Dr.) Vs. State Bank of India reported

in 2017 SCC ONLine Mad 27190

Oswal Greetech Ltd. Vs. Pankaj Oswal and others

reported in 2019 SCC OnLine NCLAT 526

Shashikala A.Kisan Awad Vs. Divisional office, Central

Review, Mumbai reported in 2005 SCC OnLine Bom 885

M.Subramanian Vs. The Branch Manager, Canara Bank,

Adambakkam, Chennai – 600 008 in W.P.No.31608 of 2015

Order passed by this Court in A.No.98 of 2019 in

C.S.No.870 of 2017 reported in 2019 (5) CTC 755

6. Whereas Mr.Arvind Pandian, learned Senior Counsel appearing for the second respondent vehemently contended that the succession certificate has been obtained without making the second respondent as a party and admittedly there are 8 writ petitions pending as against the other relatives and the petition for succession certificate has been filed without making the second respondent as a party. Therefore, in this application, the direction cannot be granted. It is his further contention that the conduct of the husband of the applicant making various relatives as nominees in a number of fixed deposits clearly show that in fact he has

gifted the money to all the relatives. It is his contention that under section 191 of the Indian Succession Act, a man may dispose, by gift made in contemplation of death, of any movable property. Hence, he has submitted that once a dispute is raised as to the right over the money by way of gift, unless the same is decided in the suit, the money cannot be paid to the applicant herein. Further, under section 145ZA of the Banking Regulations Act, only the nominee is entitled to receive the deposited amount. At the most the legal heirs have to establish their right in a civil suit. In respect of his submissions, he has relied upon the following judgments :

Vishin N. Khanchandani and another Vs. Vidya Lachmandas Khanchandani and another reported in 2000 (6) Supreme Court Cases 724

M.Vellaichamy Vs. The District Manager, Virudhunagar District, Centra Co-operative Bank and others in W.A. (MD) No.256 of 2013

S.Sampath Vs. The Regional Manager, State Bank of India and others in W.P.No.26992 of 2017

C.Shanthamma and others Vs. Indian Bank represented

by its Managing Director and Chief Executive Officer and others in W.P.No.27411of 2016

Ramesh Kumar Singh Vs. Zonal Manager, Allahabad Bank reported in 2010 (85) AIC 916

K.Gangadar Reddy and another Vs. Gooty Co-operative Town Bank Limited rep. by its Secretary and others reported in 2014 (2) ALT 66

Dasari Pullamma Vs. Andhra Bank rep. by its Deputy General Manager, Zonal Office, Kurnool, Kurnool District and others reported in 2016 (4) ALT 794

Communist Party of India (Marxist) Vs. United Bank of India and others reported in 2016 (4) WBLR 87

Gopal Ram Vs. BranchManager, Bank of India, Buzar Branch, District – Buxar and other of Patna High Court in Civil Writ Juridistion Case No.1909 of 2014

Rama Chakravarty Vs. Punjab National Bank and others reported in 1991 (71) Comp case 397

Employment Officer Vs. Sevarinathan reported in **Indian Law Reports 1985 Karnataka 318**

Santhosh Sullere and another Vs. Saroj Sullere reported in **2012 (3) M.P.L.J. 609**

Vasantha Kumari and others Vs. Rani Shantha @ Philomena and others reported in **2015 AIR (Karnataka) 167**

Chandrasekharan Nair Vs. Union of India reported in **2007 (1) KLT 1006**

Dolly Edelwaize D.Silva Vs. Mrs.Maelakin and others reported in **1943 AIR (Allahabad) 95**

Gara Surppadu and others Vs. Pandranki Rami Naidu and others reported in **1984 AIR (A.P.) 386**

Lakshmiammal Vs. Boobalan and others reported in **95 L.W. 182**

7. Heard both sides and perused entire materials available on record.

8. It is not in dispute that the succession certificate has been granted by this Court for releasing the amount lying as a deposit with the first respondent. The succession certificate has been granted after effecting paper publication etc. Several writ petitions being Nos.24061 of 2018 to 24066 of 2018, 14304 of 2020 14369 of 2020 have been filed by the applicant against various banks, namely Axis Bank, Punjab National Bank, City Union Bank, Indian Overseas Bank, Tamilnadu Power Finance and Infrastructure Development Corporation Limited, Canara Bank and Indian Overseas Bank respectively and also against the other relatives, namely other nominees, nephews and nieces of the applicant's husband. The allegations and counter allegations in the above writ petitions clearly indicate that the contesting respondents in the above writ petitions were made nominees by her husband. The counter has been filed only on 14.10.2020 by the respondents in the above writ petitions, much after the succession certificate has been granted by this Court. In the counter affidavit, it is stated that they have been nominated by the husband of the applicant with an intention to give money to the nominees therein by way of gift and monies were given to them. Such stand has been taken in the counter filed on 14.10.2020. It is also relevant to note that a suit in C.S.No.870 of 2017 on the file of this Court was filed for damages as against the

applicant herein by Metallic Bellows India Pvt. Ltd. [reported in **2019 (5) CTC 755**]. While rejecting the above suit, this Court in para 48 has observed that the very suit has been filed to scuttle the defendant/applicant herein from seeking remedy under law to indicate her rights and prevent them from speaking up to their rights or approaching the authorities seeking redressal. The finding recorded by the learned Single Judge of this Court indicate that the entire family members joined in one hand to defeat the legal right of the defendant therein.

9. Be that as it may. Now the crux of the matter is that whether the direction can be issued to the first respondent to pay the fixed deposit amount lying with them. It is to be noted that the second respondent was appointed as a nominee in the said fixed deposit. It is well settled position of law that the nominee is only a trustee. In the judgment in **Sarbati Devi and another Vs. Usha Devi** reported in **1984 (1) SCC 424**, the Apex Court has held that mere nomination made under section 39 of the Life Insurance 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 nominee cannot be considered as equivalent to an heir or legatee. In **Ram Chander Talwar and**

another Vs. Devender Kumar Talwar and others reported in **2010 (10) Supreme Court Cases 671**, it has been held that nomination merely gives right of the depositor to receive money lying in the account. But it does not make nominee owner of money lying in the account. The Division Bench of Bombay High Court in **Ahakti Yezdani Vs. Jeyanand Jayant Salgonkar** reported in **2016 SCC Online Bom 9834** has held that nomination does not over ride law in relation to testamentary or intestate succession and provisions regarding nomination are made with a view to ensure that estate or rights of deceased subject matter are protected till legal representatives of deceased take appropriate steps.

10. In the judgment in **Shashikala A Kisan Awad Vs. Divisional Office, Central Railway, Mumbai** reported in **2005 SCC Online Bom 885**, the learned Single Judge of Bombay High Court has held that once a succession certificate is issued by a testamentary Court, the Union of India is bound to accept the same and on non acceptance of the same, the testamentary Court, who has issued the succession certificate is entitled to issue a direction to accept such a succession certificate and the consequence must follow accordingly. In the above case, despite the succession certificate granted by the Bombay High Court, the railway

authority has not released the amount. Hence, the Court has directed to release of the amount. In **Vishin N. Khanchandani and another Vs. Vidya Lachmandas Khanchandani and another** reported in **2000 (6) Supreme Court Cases 724**, the Apex Court has held as follows :

“The submission made on behalf of the appellants has no substance in view of sub-section (2) of [Section 8](#) and the Statement of Objects and Reasons necessitating the passing of the Act. Sub-section (1) of [Section 8](#) provides that if any payment is made in accordance with the provisions of the Act to a nominee, the same shall be a full discharge from all further liabilities in respect of the sum so paid. [Section 7](#) of the Act provides that after the death of the holder of the savings certificates payment of the sum shall be made to the nominee, if any, and sub-section (1) of [Section 8](#) declares that such payment shall be a full discharge from all further liabilities in respect of the sum so paid. However, sub-section (2) of [Section 8](#) specifies that the payment made to the nominee under sub-section (1) shall not preclude any executor or administrator or the legal representative of the deceased holder of a savings certificate from

recovering from the person receiving the same under [Section 7](#); the amount remaining in nominee's hand after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration. In other words though the nominee of the national savings certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succession applicable in the case, however, subject to the exception of deductions mentioned in the sub-section.”

11. In the judgment of the Division Bench of this Court in **Mr.Vellaichamy Vs. the District Manager, Virudhunagar District Central Co-operative Bank and others in W.A. (MD) No.256 of 2013**, relied on by the second respondent, it has been held that a nominee is a custodian and the money that may be received by the nominee should be kept for the interest of others, who are otherwise legally entitled to and the nominee cannot claim ownership in the money lying in the account. The Single Judge of this Court in **S.Sampath Vs. the Regional Manager, State Bank of India in W.P.No.26992 of 2017** has held that

When there is nomination as per section 45ZA of Banking Regulation Act 1949, the bank has to release the amount to the nominee and allowed the writ petition. Similar view has been taken by the Telangana and Andhra Pradesh High Court in **Dasari Pullamma Vs. Andhra Bank, rep. by its Deputy General Manager, Zonal Office, Kurnool, Kurnool District and two others** reported in 2017 (1) BankJ 284 and by the Calcutta High Court in **Communist Party of India (Marxist) Vs. United Bank of India and others** reported in 2016 (4) WBLR 87.

12. In the judgment in **Rama Chakravarty Vs. Punjab National Bank and others** reported in 1991 (1) Cal. L.T. 324, the Calcutta High Court directed the bank to release the amount on the basis of the deposit. These cases will not help the respondent in any manner. Since in the above cases, the bank insisted for succession certificate in favour of the nominee, in such situation, the Court held that as long there is nomination, the bank is bound to release the amount to the nominee under section 45ZA of the Banking Regulation Act. The respondent also placed reliance on judgment of the Karnataka High Court in **Employment Officer Vs. Sevarinathan** reported in **Indian Law Reports 1985 318**, wherein the succession certificate is sought to be enforced under Order 21 C.P.C and the

Karnataka High Court has held that succession certificate cannot be enforced since it is not a decree or Order within the meaning of the Civil Procedure Code. In the judgment of the Division Bench of Kerala High Court relied upon by the second respondent in **Chandrasekharan Nair Vs. Union of India** reported in **2007 (1) KHC 738**, it has been held that the gift in contemplation of death made towards Chief Minister's Relief Fund is valid under section 191 of the Banking Regulation Act. There cannot be dispute at all with regard to the above aspect. Merely making such submissions at a later point of time without any proof. Such contention of the alleged gift is improbable and unbelievable and the gift cannot be presumed merely on the basis of some nomination.

13. Similarly the judgment of the Allahabad High Court in the judgment in **Gara Surppadu and others Vs. Pandranki Rami Naidu and others** reported in **1984 AIR (A.P.) 386** also relied on by the second respondent to contend that gift is permissible. Absolutely there is no dispute over the gift under section 191 of the Indian Succession Act and the competence of the person to make a gift as per the provision of law. The other judgment relied upon by the second respondent in **Lakshmiammal Vs. Boobalan and others** reported in **1995 Law Weekly 182** to

contend that a direction cannot be issued in the Original Petition to release the fund. The facts of the above case is totally different wherein in the above case after the release of the amount on the basis of the succession certificate after 11 years, a petition was filed invoking inherent powers of the Court by the third parties and strangers for a direction to invoke the succession certificate granted by this Court and to redeposit the amount. In such a situation, this Court had held that no direction can be granted. The facts of the above judgment is not applicable to the facts of the present case.

14. During the submissions, when this Court posed a question when the alleged oral gift has been made, the learned counsel appearing for the second respondent is unable to give any details. Though such stand had been taken in the counter filed at a later point of time on 04.10.2020, on perusal of records, particularly, the letter correspondences between the parties, namely the second respondent and the first respondent Sundaram Finance, in the letter dated 20.08.2017 issued by the second respondent to the Sundaram Finance, he never whispered anything about the gift made by late Hari. The above letter also indicate that the original fixed deposit receipt is with the legal heir Mrs.Vidyaa

Hari and therefore, he is unable to close the deposit. If really the gift as contended by the second respondent is valid and true, the original deposit must be in the hands of the second respondent to believe the same. What is required to constitute a valid gift of a immovable property is delivery. Even under section 191, the gift is said to be made in contemplation of death, of any movable property which he could dispose of by Will. If really, late Hari in contemplation of death made the gift of cash, there was no necessity to deposit the money in his name, restricting the right of the second respondent as only a nominee. Therefore, the alleged gift pleaded at a later point of time, that too after the succession certificate was obtained is highly improbable. Such a conclusion is further fortified by very conduct of the second respondent. After this Court had granted succession certificate on 26.02.2019, even in the letter dated 19.03.2019, the second respondent has reiterated the fact that the original deposit receipt is not with him.

15. After a copy of the succession certificate is sent to the first respondent, the Sundaram Finance has addressed a letter to the applicant herein admitting the legal position and requested her to furnish certain documents to pay the entire amount. Similarly, they have also addressed a letter to the second respondent

indicating the legal position of nominees versus successor to the estate of the deceased and categorically said that the right of a legal heir cannot be usurped by the nominee, since the nomination can neither displace the laws of succession nor substitute a Will and relying on the judgment of the Division Bench of the Bombay High Court, the Sundaram Finance has categorically stated in the letter addressed to the second respondent that nominee does not obtain any absolute title to the property. Thereafter, though a reply was sent by the second respondent on 15.05.2019, in the above letter the contention raised by the second respondent was to the effect that the succession certificate was obtained without impleading him and further he has reiterated his right to receive the fixed deposit only as per the Section 45ZA of the Banking Regulation Act and again requested the first respondent to release the amount to him as a nominee. This letter is more relevant to appreciate the contention of the parties. In the above letter sent on 15.05.2019, there is no whisper as to the oral gift of the so called money as pleaded subsequently in the counter dated 04.10.2020 in the writ petitions. If really there was a oral gift or gift as per Section 191 of the Indian Succession Act what should have been conduct of the parties. At the very inception itself he should have informed the same to the bank or to the first respondent at the earliest point of

time.

16. In none of the correspondences, the second respondent ever whispered anything about the so called gift as per Section 191 of the India Succession Act. Therefore, the theory of the alleged gift appears to be nothing but after thought and introduced at later point of time. The conduct of the first respondent Sundaram Finance having fully agreed the legal position and informing the same to the second respondent, that too after the succession certificate has been obtained by the legal heir and again going for interpleader suit is highly deprecated. It is to be noted that as per Part X of the Indian Succession Act once succession certificate has been granted, such certificate is conclusive as against the persons owing such debts. Section 381 of the Indian Succession Act reads as follows :

“Section 381. Effect of certificate – Subject to the provision of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect,

afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.”

The above section makes it very clear that the succession certificate is conclusive as against the persons owing such debts and it makes it clear that there will be indemnity to all such persons with regard to the payments on the basis of the succession certificate.

17. As far as Section 45ZA of the Banking Regulation Act is concerned, the above section indicate that the amount shall be paid to the nominee. It is also to be noted that Section 45ZD makes it clear that when there is an Order or a certificate or other authority from a Court obtained relating to such article is produced before the bank, the bank shall take due note of such decree, Order, certificate or other authority. Therefore, it cannot be said that even after the succession certificate is granted by the competent Court is produced before the bank, they cannot ignore the same merely on the basis of Section 45ZA of the Banking Regulations Act. Even though 45ZA contained non obstante clause, the

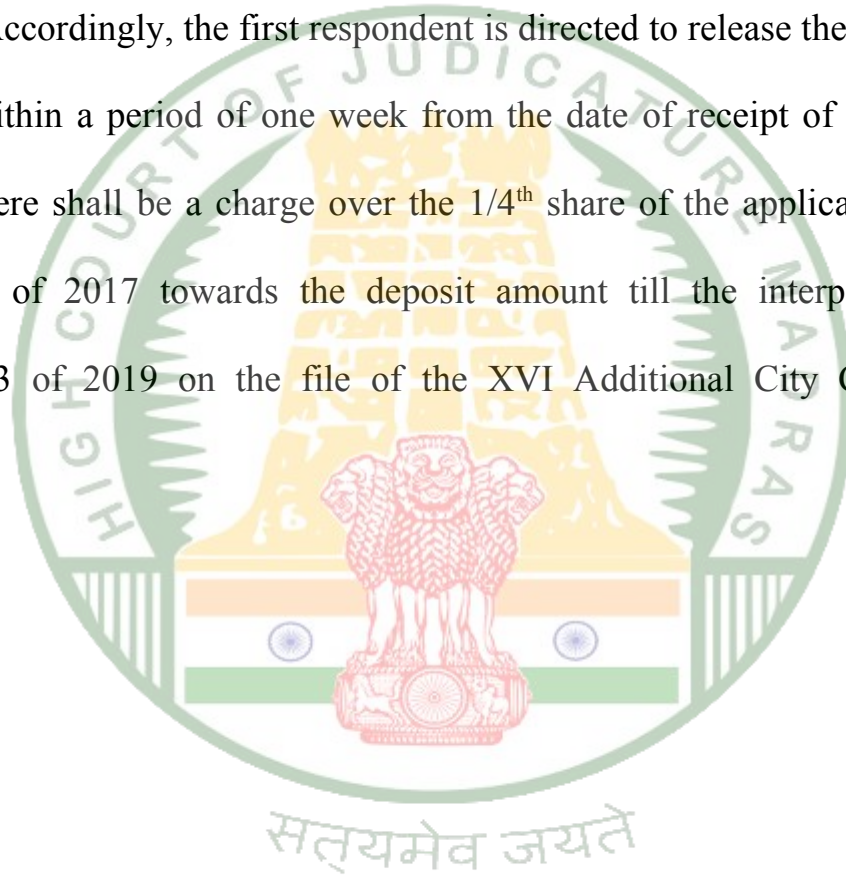
Apex Court in **Vishin N. Khanchandani Vs. Vidya Lachamandas Khanchandani** reported in **2000 (6) SCC 724** in para 11 has categorically held that though the over riding effect of non obstante clause to attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made have to be kept in mind, as the nominee has to be treated as a trustee and he is entitled to receive the amount only and he has to pay the amount to the persons who are entitled under law of succession. Therefore, when the succession certificate already granted, the object of the Indian Succession Act has to be given importance. Accordingly, the contention that only the nominee alone as per section 45ZA of the Banking Regulations Act is entitled to receive the money even after succession certificate is granted, cannot be countenanced. Therefore, merely because a suit has been filed at a later point of time at the instance of the nominee, despite the succession certificate has been produced, the same has no relevance to decide this application. If at all the second respondent in the event of succeeding in the suit in O.S.No.5683 of 2019, to realise the amount, this Court is of the view that some security has to be offered by the applicant herein. The learned counsel for the applicant Mr.Mohan submitted that in C.S.No.899 of 2017 already 1/4th share of the applicant has been declared

and preliminary decree is already passed and charge may be created in respect of the above 1/4th share of the applicant towards the deposit amount till the interpleader suit is decided.

18. Accordingly, the first respondent is directed to release the amount to the applicant within a period of one week from the date of receipt of a copy of this Order. There shall be a charge over the 1/4th share of the applicant declared in C.S.No.899 of 2017 towards the deposit amount till the interpleader suit in O.S.No.5653 of 2019 on the file of the XVI Additional City Civil Court is decided.

11.12.2020

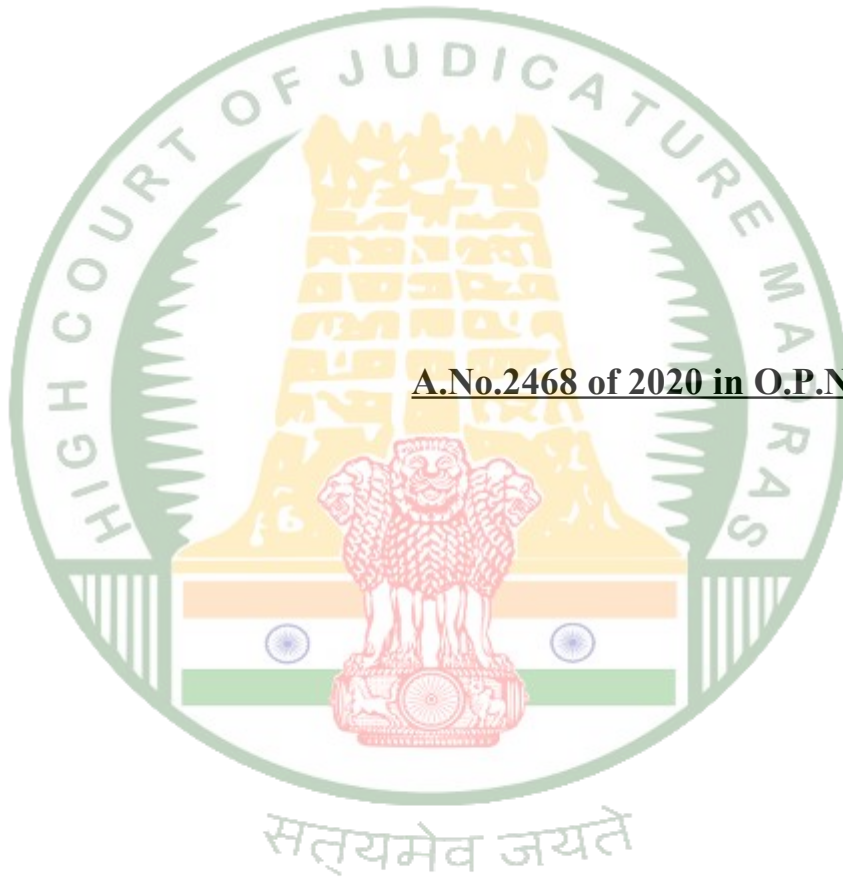
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