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MAT 351 of 2014
With
I.A. No.CAN 1 of 2014 (Old CAN 2414 of 2014)

Union of India & Ors.
Vs.
Smt. Parbati Devi & Ors.

Ms. Aparna Banerjee .... for the appellants.

Mr. Kallol Basu,
Mr. Nilanjan Pal ... for the respondent no.1
Writ petitioner.

Ms. Amrita Pandey ... for the added respondent.

This mandamus appeal is directed against the order dated 29th January, 2014 passed in W.P. No.713(W) of 2014 filed by the first respondent herein, Smt. Parbati Devi. The first respondent / writ petitioner prayed for issuance of writ of mandamus to direct the appellant authorities to immediately release the amount of Employees' Deposit-Linked Insurance Scheme benefit (for short 'EDLI') in respect of late Sankar Das, who was the husband of the writ petitioner under the EDLI Scheme, 1976 together with interest @ 18 % per annum from the date of entitlement till the date of payment. The reason, which prompted the first respondent to approach the writ Court was on the ground that the appellant authority refused to release the benefit on the ground that the first respondent's husband is a missing person and was declared to be dead by the Civil Court by judgment dated 7th July, 2009 and under the provisions of the Scheme, payment of insurance benefit in respect of missing EPF member is not contemplated. The learned Writ Court after taking into consideration the facts as well as Section 22 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 read with Clause 2.2 of the 1976 Scheme held that the first respondent / writ petitioner is entitled to the benefit.

Questioning the correctness of the said order, the appellants are before us. The short question of law involved in this appeal is whether the first respondent can be denied the benefit payable to her late husband under the Scheme on the ground that the Scheme does not provide for any such payment when the member of the Scheme is found to be missing. The undisputed facts are that the husband of the first respondent went missing on and from 16th May, 2000. She immediately lodged a complaint on 5th July, 2000 reporting the fact that her husband is not traceable. Thereafter on 31st July, 2008 a suit for declaration that her husband suffered a civil death was filed. Ultimately, a decree came to be passed on 7th July, 2009 declaring that the petitioner's husband is presumed to be dead rather a declaration was that there is a civil death.

Ms. Banerjee, the learned counsel for the appellant submits that a missing person can be presumed to be dead only after an adjudication to that effect is made. She submits that in the instant case the Civil Court by its judgment and decree dated July 7, 2009 declared that the husband of the respondent no. 1 herein has suffered civil death. Since such adjudication is made after the date of superanuation of the employee, which is sometimes in the month of April, 2009, it cannot be said that the employee died while in service. She, further, submits that the Assurance Benefits is payable only on death of the employee while in service.

On the other hand, Mr. Kallol Basu, the learned counsel for Respondent No. 1 contends that the date when the employee went missing shall be taken to be the date of death of such employee. The learned counsel for the Respondent no. 1 places reliance on the provisions of Section 108 of the Evidence Act in order to contend that a missing person can be presumed to be dead under certain circumstances.

Section 107 of the Evidence Act deals with the presumption of continuation of life. Section 108 is in effect a proviso to Section 107 which specifies that when a person was continuously absent for 7 years and he was not heard by those who would have naturally heard of him if he had been alive, he may be presumed to have died and the burden of proving that such person is alive shifts on the person who asserts the fact that such person is alive.

The only presumption which can be drawn under Section 108 of the Evidence Act is that a person who has not been heard of for seven years or more is dead at the time when such question is raised. But the exact time of death is not a matter of presumption but of evidence. Thus, there is neither any presumption of his being alive for a period of 7 years from the time he was last heard of, nor is there any presumption of such person having died immediately after his disappearance. There is also no presumption that death took place at the close of seven years. Thus, the contention of Mr. Basu that the employee shall be treated to have died on the date of his disappearance cannot be accepted by this Court.

In the instant case, the suit for declaration of civil death was instituted more than 7 years from the date of disappearance of the employee and it was long prior to date of superanuation of the employee. The suit was filed since a dispute was raised as to whether a person is alive or not. The onus to prove that such person was alive by persons asserting such fact would obviously date back to the date of initiation of proceeding.

Thus, this Court is of the considered view that once the declaration was made by the Civil Court, the presumption of civil death in the instant case would date back to the initiation of the civil suit, i.e. on 31st July, 2008 and the same would not commence from the date of such adjudication, i.e. on 7th July, 2009 [see Parbati Dasgupta vs. Official Liquidator & anr. reported at (2004) 1 WBLR (Cal.) 846]. Thus, this Court is unable to accept the contention of Ms. Banerjee that the missing person shall be presumed to be dead with effect from the date of the judgment and decree.

For the reasons as aforesaid, this Court holds that there is only one presumption in the instant case and that is when the suit was instituted on 31st July, 2008, the employee was no longer alive. Admittedly the suit was instituted prior to the date of superannuation of such employee. Thus, the death of such employee shall be presumed to have taken place while in service.

It is not in dispute that the pensionary benefits have been settled to the first respondent. In fact, initially there appears to have been a partial settlement and thereafter, the difference in the pensionary benefits have also been paid. Therefore, there is no dispute in the fact about the first respondent's entitlement to the benefits due and payable to her deceased husband including the benefits under the EDLI Scheme.

On a conjoint reading of Section 22 with Clause 2.2 it appears to this Court that the assurance benefit is payable on death of the employee while in service. This Court already held that the death of the husband of the respondent no. 1 shall be presumed to have taken place while in service. This Court is thus of the considered view that the conditions laid down in Section 22 read with Clause 2.2. that the assurance benefit is payable on the death of the employee while in service is satisfied in the instant case and accordingly respondent no. 1 would be entitled to the benefits under EDLI scheme.

Though, this Court does not approve the reasoning of the learned Single Judge that the husband of the first respondent is deemed to be in service until it was declared that he has suffered death, for the reasons as stated herein before, yet this approves the ultimate conclusion arrived at by the learned Single Judge that the respondent no. 1 would be entitled to such benefits. With regard to the payment of interest is concerned, though there was a prayer made by the first respondent for payment of interest @ 18% annum for the entire period, the learned Writ Court had rightly restricted it to 10% simple interest from the date of entitlement and also fixed a time frame within which the amount has to be paid.

Thus, we find no ground for interference in the order under appeal.

Accordingly, the writ appeal and the connected application are dismissed. Time for releasing the amount as fixed by the learned Writ Court is extended by 12 weeks from the date of receipt of this order, either certified or server copy.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)