

03.08.2021

Ct. No.13

Sl. No.6

akd

W.P.A. 11857 of 2021 [via video conference]

[Hanuman Prasad Khemka & Anr. -Vs- State Bank of India & Anr.]

Mr. Pratyush Patwari

... .. for the petitioners

Mr. Om Narayan Rai

... .. for the SBI

The writ petitioners are aggrieved by refusal of the State Bank of India, Jatindra Mohan Avenue Branch, to allow operation of a locker standing in the name of one late Ashwini Khemka. The writ petitioner Nos.1 and 2 are the father and widow, respectively of the deceased.

Admittedly, the document by which the locker was opened did not contain any nomination. The petitioners rely upon a nomination in favour of the petitioner no.2 in a savings bank account of the deceased with the Branch of the bank. It is also submitted that the locker is linked with the savings bank account. Learned counsel for the bank does not admit the same.

The petitioners rely upon a decision of the Telengana High Court in the case of ***Smt. Vasumathi P vs. The HDFC Bank Ltd.*** dated 19th September, 2018 in W.P. No. 12668 of 2012. In the said decision, a widow and children of the deceased locker holder was refused operation of the locker. The bank had insisted on appropriate succession certificates.

The Telengana High Court after considering Section 45ZF of the Banking Regulation Act, 1949 and Sections 214, 370 and 372 of the Indian Succession Act, 1925 held that a locker cannot be termed either as a debt or a security of a deceased since its

contents are not known. The Bank's contention was thus rejected. The High Court went on to direct the bank in that case to allow legal heirs to operate the said locker.

With due respect this Court is unable to accept the decision of the Telengana High Court, inter alia, for the reason that Section 45ZF of the Banking Regulation Act, 1949 in the last sentence has mandated that "the banking company shall take due note of such decree, order, certificate or other authority while considering the request for operation of a locker by legal heirs".

Section 45ZF of the 1949 Act is set out hereinbelow:

"45ZF. Notice of claims of other persons regarding safety lockers not receivable No notice of the claim of any person, other than hirer or hirers of a locker, shall be receivable by a banking company nor shall the banking company be bound by any such notice even though expressly given to it: PROVIDED that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to the locker or its contents is produced before the banking company, the banking company shall take due note of such decree, order, certificate or other authority."

The expression 'order' in the aforesaid Section has to be understood to include Letters of Administration granted under Section 278 of the Indian Succession Act. Hence while the HDFC Bank in that case may have used the wrong expression (succession certificate) in the impugned order therein, it was only complying with the stipulations under Section 45ZF.

This court notes that the Reserve Bank of India has in a circular dated July 01,2015 being the Master circular for Customer Services at Regulation 4.1.7 to Regulation 4.1.8, has directed as follows :-

"4.1.7. Access to safe deposit lockers / return of safe custody articles (without survivor/nominee clause)

There is an imperative need to avoid inconvenience and undue hardship to legal heir(s) of the locker hirer(s). In case where the deceased locker hirer had not made any nomination or where the joint hirers had not given any

mandate that the access may be given to one or more of the survivors by a clear survivorship clause, banks are advised to adopt a customer-friendly procedure drawn up in consultation with their legal advisers for giving access to legal heir(s) / legal representative of the deceased locker hirer. Similar procedure should be followed for the articles under safe custody of the bank.

4.1.8. Banks are advised to be guided also by the provisions of Sections 45ZC to 45ZF of the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies (AACS) and the Co-operative Banks (Nomination) Rules, 1985 and the relevant provisions of the Indian Contract Act and Indian Succession Act.”

Based on the above, the State Bank of India has framed guidelines in terms of such Master circular of the Reserve Bank of India. The said circular dated 31st January, 2019 is called Master Circular Safe Deposit Lockers/Safe Custody Articles. Clause 3.2(i) stipulates as follows :-

“3.2(i). In case of death of a sole locker hirer (where there is no nomination) and there is a valid will, probate may be obtained and access may be given to the executor/administrator. In other cases, access may be given to the legal representative of the deceased. In such cases death certificate and proof of the legal representation should be obtained. The legal representation would be in the form of Probate or Letters of Administration.”

A conjoint reading of Section 45ZF of the 1949 Act, the guidelines of the Reserve Bank of India and the circular of the State Bank of India would lead to the following conclusions.

- a) Section 45ZF of the 1949 Act does not mandate automatic operation of a locker by the family of a deceased locker holder in the absence of any nomination.
- b) Such right of family members to operate locker can flow from either a decree in the nature of a probate or letters of administration and/or any certificate from any authority.

- c) If the contents of the locker are unknown, Letters of Administration from a Competent Court is required to be produced by the family member.
- d) If the contents of the locker are in fact known then a succession certificate would be required to be produced by the claimant.
- e) If the deceased has left a Will, Probate thereof would be required to entitle legal heir to open the locker.

While the bank was required by the Reserve Bank of India to adopt 'a customer friendly approach', Clause 3.2(i), in no answer to terms mandates that the persons claiming to be legal heirs and asserting a right to operate locker of an intestate deceased are required to produce a probate or letters of administration.

Even a nominee of a bank account/locker/deposit account/insurance policy/shares etc. is only trustee of the declared inheritors of the estate of a deceased.

Reference in this regard is made to the decision of ***Rama Chakravarty v. Manager, Punjab National Bank*** reported in **1990 SCC OnLine Cal 257**. Relevant paragraphs are set out hereinbelow:

“2. It is true that the law in India is, by and large, against any interference with the ordinary course of intestate succession, save and except by a valid testamentary disposition strictly in accordance with the law governing testamentary disposition. We have got to, as pointed by the Supreme Court in *Sarbati Davi v. Usha Devi* (AIR 1984 SC 346 at 349) : 1984 All LJ 194, bear in mind the anxious care that our law takes in the matter of execution and proof of testamentary instruments which have the effect of diverting the estate of the deceased or any part thereof from the ordinary course of intestate succession. If any post-mortem course of disposition of property does not satisfy the strict and rigorous requirements of the rules governing testamentary succession, it would stand out weighed and overthrown by the general law of intestate succession, unless a statute rules otherwise. A nominee, therefore, notwithstanding a valid nomination in his favour by the last holder in respect of any property, would not acquire any right, title or interest in the property itself, to the exclusion of the heirs on intestacy,

unless the law governing such nomination clearly vests the same in the nominee.

7. The relevant provision is section 452E of the Act, contained in Part IIIB thereof, inserted by an Amendment in 1984. Sub-Section (1) provides that a hirer of a Locker may nominate another “to whom, in the event of the death of such individual (i.e. the hirer), the Banking company may give access to the locker and liberty to remove the contents of the locker”. Section 452A deals with rights of a nominee in respect of deposit of money and Section 452C deals with the rights of a nominee in respect of deposit of articles. Sub-Section (2) of Section 452A clearly provides that on the death of the depositor of money “the nominee shall become entitled to all the rights of the depositor in relation to such deposit to the exclusion of all other person “In the case of deposit of money, therefore, the nominee, on the death of the depositor, not only acquires the right to receive the amount, but acquires in the amount, all the rights of the depositor to the exclusion of all other persons. The absence of any such provision vesting all the rights of the depositor in the nominee, in Section 452E is conspicuous, whereunder the nominee does not acquire any title in the Locker or its contents. Sub-section (3) of Section 452C dealing with deposit of articles also provides that on the death of a depositor, “the nominee shall become entitled to the return of the article to the exclusion of all other persons”. The position, therefore, appears to be that while section 452A purports to confer on a nominee in respect of the deposit of money, not only the right to receive the amount but also the right to the amount itself, Section 452C purports to confer on a nominee in respect of a deposit of articles only the right to the return of the article, but no right in the article itself.

10. But in the case of a Safety Locker, all that the Bank does is to rent out a space or a receptacle which, if not terminated earlier, comes to an end with the death of the hirer. Bank has no knowledge of or concern with what is stored in the Locker and the hirer, like a lessee, is under an obligation to remove all the contents therefrom and deliver the vacant possession of the Locker to the Bank on the termination of the hiring. As the hiring comes to an end with the death of the hirer, Section 452E provides that access may be given to the nominee to the Locker along with the liberty to remove the contents to enable the nominee to deliver vacant possession of the Locker.

11. Be that as it may, coming to the case at hand, I must confess my utter inability to understand as to why and how the respondent Bank could insist on a succession certificate being produced by the nominee before granting her access to the Locker. The Bank, and also its legal adviser who, in his reply to the petitioner's lawyer, so loudly insisted on a succession certificate, ought to have noted that under S. 370 of the Succession Act, 1925, there can be succession certificate only for debts and securities. The expression “security” has been defined in S. 370(2) and cannot include the right of access to a Safety Locker and the right to receive or remove its contents. As to the expression “debt”, there are authorities for the view that the expression in S. 370 does not include moveable property other than a specific or ascertained sum of money. But even going by its wider connotation, the expression debt would mean a liability of one person to another person, in cash, or in kind, whether secured or unsecured, which is or can be ascertained. The liability of, say, a lessor, to allow the lessee access to the demised property on the termination of a lease in order to enable the lessee to remove his belongings therefrom is obviously not a debt or security, by any test within the meaning of S. 370, Succession Act.

13. A succession certificate does not decide or confer any title but merely clothes the holder of the certificate with the authority to realise the debts and securities belonging to the deceased and to give valid discharge. A nomination under S. 452E also can only vest the nominee with the authority to open the Locker hired by the nominator and to receive and remove the contents. Sub-section (4) enjoins the Bank to prepare an inventory of the contents of the Locker and sub-s. (3) categorically provides that “on the removal of the contents of any Locker by any nominee, the liability of the banking company in

relation to the contents of the Locker shall stand discharged.” With these provisions staring at the face, and the Bank not disputing the validity or otherwise of the nomination, it had no business to ask the nominee to produce a succession certificate and thus to indulge in fruitless logomachy. More so, when the materials on record go to show that the petitioner has clearly declared that her husband left no other heir and produced certified copy of the judgment to show that the civil suit filed against the petitioner has been dismissed. If any other person has or can have any claim in respect of the contents of the Locker, he would have to sort it out with the petitioner. But the Bank is not required to behave like a busybody and develop any headache over the matter. The Bank and its legal advisers ought to have realised that the Bank is expected to adopt an attitude of co-operation, and not of a combatant, to its customers or their representatives.”

Further reference may be made to the decision of ***Indrani***

Wahi v. Registrar of Coop. Societies reported in **(2016) 6 SCC**

440. The relevant paragraphs are set out hereinbelow:

“17. Having perused the aforesaid provisions, there can be no doubt, that where a member of a cooperative society nominates a person in consonance with the provisions of the Rules, on the death of such member, the cooperative society is mandated to transfer all the share or interest of such member in the name of the nominee. The above interpretation of Section 79, at our hands, also emerges from Section 80(1)(a) which postulates, that the share or interest of a member of the society, “on his death” shall be transferred to a person “nominated under Section 79”. It is also essential to notice, that the rights of others on account of an inheritance or succession is a subservient right. Only if a member had not exercised the right of nomination under Section 79, then and then alone, the existing share or interest of the member would devolve by way of succession or inheritance. The heading of Section 80 — “Disposal of deceased member's share of interest” lends further credence to the above interpretation.

This extract is taken from *Indrani Wahi v. Registrar of Coop. Societies*, (2016) 6 SCC 440 : (2016) 3 SCC (Civ) 196 : 2016 SCC OnLine SC 321 at page 453

18. In addition to the aforesaid statutory provisions, we would like to make a reference to Rules 127 and 128 of the West Bengal Cooperative Societies Rules, 1987. Rules 127 and 128 of the 1987 Rules are extracted below:

“127. Nomination of transferee.—(1) *A member of a cooperative society may in accordance with the provision of Section 79, nominate in writing any person belonging to his family to whom the share or interest or the value of such share or interest shall, on his death, be paid or transferred under the provision of the Act:*

Provided that if a member has no family he may nominate any person to whom such share or interest or the value of such share or interest shall be paid or transferred:

Provided further that such member may, from time to time, revoke such nomination and make a fresh nomination.

(2) Every cooperative society shall keep a register of all person (sic persons) so nominated.

(3) In case the nominee of a member dies, the member shall report the death to the society, and make a fresh nomination if he so desires.

Explanation.—For the purpose of this rule a family shall have the same meaning as given in the Explanation to sub-section (2) of Section 13 and shall include major sons and daughters.

128. Disposal of deceased member's share or interest and procedure for calculation of value of shares.—

(1) When upon the death of a member of a cooperative society, the question of transferring the share, or paying interest of such deceased member arises, and the Board of such society finds that the deceased member did not make any nomination in accordance with the provisions of Section 79, or that the existence or residential address of the person nominated cannot be ascertained, or that for any other sufficient cause such transfer of payment cannot be made without unreasonable delay, the Board may transfer the share or pay interest of such deceased member in favour of or to any person who presents in writing his or her claim for the said share or interest and produces, in support of such claims, probate, letter of administration or succession certificate issued by a competent court having jurisdiction, and makes a written declaration in an affidavit before a Magistrate that he or she is the rightful claimant, being the legal heir or representative of the deceased.

(2)(a) Where a cooperative society has to make a refund of the value of a share, the value of the share shall be deemed to be equal to the amount paid upon the share:

Provided that where a portion of the assets is estimated to be bad or doubtful in the latest audited balance sheet, and is not covered by funds created out of profits, the Board may, for the purposes of such payment, reduce the value of the share in the same proportions as the aggregate amount of assets which are not bad or doubtful, less the amount of outside liabilities, bears to the paid-up share capital.

(b) Where a transfer of share or interest is made, the value of the share or interest shall be deemed to be the sum actually paid by the member for the acquisition of such share or interest.”

(emphasis supplied)

19. In the same manner as is postulated under Section 79 of the 1983 Act, Rule 127 of the 1987 Rules provides, that if a nomination has been made by a member under Section 79, the share or interest or the value of such share or interest standing in the name of the deceased member, would be transferred to the nominee. It is however, necessary to notice that Rule 127 postulates nomination only in favour of a person “belonging to his family”. It is not necessary for us to deal with the issue whether the appellant Indrani Wahi, being a married daughter of the original member Biswa Ranjan Sengupta, could be treated as a member of the family, of the deceased member (Biswa Ranjan Sengupta), because the learned Single Judge, as also, the Division Bench of the High Court concluded, that the appellant Indrani Wahi was a member of the family, of the original member Biswa Ranjan Sengupta. This conclusion has not been assailed by the respondents, before this Court.

20. Rule 128 of the 1987 Rules also leads to the same inference. Inasmuch as Rule 128 aforementioned provides, that only in the absence of a nominee, the transfer of the share or interest of the erstwhile member, would be made on the basis of a claim supported by an order of probate, a letter of administration or a succession certificate (issued by a court of competent jurisdiction).

21. Insofar as the instant aspect of the matter is concerned, there is no doubt in our mind, that even Rules 127 and 128 of the 1987 Rules, lead to the inference, that in case of a valid nomination, under Section 79 of the 1983 Act, the cooperative

society is liable to transfer the share or interest of a member in the name of the nominee. We hold accordingly.

22. Having recorded the above conclusion, it is imperative for us to deal with the conclusion recorded in para 6 (already extracted above at p. 448*f-h* and p. 449*a-b*) of the judgment of this Court in *Usha Ranjan Bhattacharjee case* [*Usha Ranjan Bhattacharjee v. Abinash Chandra Chakraborty*, (1997) 10 SCC 344]. In this behalf, it is necessary to clarify that transfer of share or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the cooperative society concerned, and is binding on the said society. The cooperative society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased.

23. Insofar as the present controversy is concerned, we therefore hereby direct the Cooperative Society to transfer the share or interest of the Society in favour of the appellant Indrani Wahi. It shall however, be open to the other members of the family (presently only the son of Biswa Ranjan Sengupta, Dhruva Jyoti Sengupta; we are informed that his mother Parul Sengupta has died), to pursue his case of succession or inheritance, if he is so advised, in consonance with law.”

A Division Bench of the Bombay High Court in **Shakti Yezdani and Another Vs. Jayanand Jayant Salgaonkar and Others** reported in **2016 SCC OnLine Bom 9834** following the Indrani Wahi (supra) decision has at paragraphs 32, 33, 34, 36, 39, 40, 41, 42 and 44 has dealt with the Status of Nominees under different laws and contracts. Reference has been made various decisions of the Supreme Court on each subject. It is therefore necessary to fully set out the aforesaid paragraphs.

“**32.** Now we come to the decision of the Apex Court in the case of *Ram Chander Talwar v. Devender Kumar Talwar*¹². The issue before the Apex Court was whether a nominee in the bank account held by the deceased can claim full rights over the money lying in the account to the exclusion of the legal heirs. Paragraphs 4 to 6 of the said decision read thus:

“**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.**

6. We find that the High Court has rightly rejected the appellant's claim relying upon the decision of this Court in *Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani* [(2000) 6 SCC 724]. The provision under Section 6(1) of the Government Savings Certificates Act, 1959 is materially and substantially the same as the provision of Section 45-ZA(2) of the Banking Regulation Act, 1949, and the decision in *Vishin N. Khanchandani* [(2000) 6 SCC 724] applies with full force to the facts of this case.”

(emphasis added)

33. Sub-section (2) of Section 45-ZA of the Banking Regulation Act, 1949 starts with a non-obstante clause which seeks to override any other law for the time being in force or any disposition whether testamentary or otherwise in respect of such deposit, where a nomination has been made in the prescribed manner. Though the word “vest” is not used in Sub-section (2) of Section 45-ZA, it provides that a nominee on the death of the sole depositor or as the case may be, on the death of all the depositors becomes entitled to all rights as the sole depositor in relation to such deposit to the exclusion of all other persons. The Apex Court held that the Banking Regulation Act, 1949 is no way concerned with the question of succession and, therefore, all the monies receivable by the nominee by virtue of Sub-section (2) of Section 45-ZA would form part of the estate of the deceased depositor and would be governed by the law of succession by which the depositor was governed. Though Sub-section (2) of Section 45-ZA seeks to override any other law for the time being in force or any disposition, whether testamentary or otherwise, the Apex Court held that the nominee does not become the owner of the money lying in the account.

34. Coming back to the decision in the case of *Vishin N. Khanchandani*, as stated earlier, the Apex Court interpreted Section 6 of the Government Savings Certificates Act, 1959. We have already quoted Section 6 of the said Act. As pointed out earlier, even Sub-section (1) of Section 6 starts with a similar nonobstante clause. The submission of the Appellant before the Apex Court which is noted in Paragraph 6 based on the non-obstante clause, was that Section 6 of the Government Savings Certificates Act, 1959 was intended to make the nominee the absolute owner of the value of the saving certificates. In Paragraphs 10 and 11 of the said decision, the Apex Court noted the difference between Section 39 of the Life Insurance Act, 1938 and Section 6 of the Government Savings Certificates Act, 1959 and noted that Section 6 starts with a nonobstante clause as distinguished from Section 39 of the Life Insurance Act.

Ultimately, in Paragraph 13, the Apex Court observed that though the phraseology used in Section 39 of the Life Insurance Act, 1938 is different from the phraseology used in Section 6 of the Government Savings Certificates Act, 1959, the effect of both the provisions is the same and that is how in Paragraph 13 in the case of *Vishin N. Khanchandani*, the Apex Court held thus:-

“13. In the light of what has been noticed hereinabove, it is apparent that though the language and phraseology of Section 6 of the Act is different from the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the National Savings Certificates, to the nominee of the holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in *Sarbati Devi case* [(1984) 1 SCC 424: 1984 SCC (Tax) 59] holds the field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those in whose favour the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.”

36. Section 109B of the Companies Act does not advance the case of the Appellants any further. Section 109B does not suggest that on nomination being made by a deceased shareholder of a Company, his nominee becomes the owner of the shares to the exclusion of all other legal heirs.

39. In the present case, we find that the provisions of Section 109A and in particular Sub-section (3) thereof are not materially different from the provisions of Sub-section (1) of Section 6 of the Government Savings Certificates Act, 1959. Sub-section (2) of Section 45-ZA of the Banking Regulation Act, 1949 is also similar to Sub-section (2) of Section 109B. The same is the case with Bye-law 9.11 of the Depositories Act, 1996. Even assuming that the format of the nomination requires attestation as required by a will under the Indian Succession Act, 1925, the nomination does not become a testamentary disposition. Therefore, the decision of the Apex Court in the case of *State of Himachal Pradesh v. Ashwani Kumar* is of no help to the Appellants.

40. Reliance is placed on Sub-Section (2) of Section 58 of the Indian Succession Act, 1925 which reads thus:

“58. General application of Part.—(1) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by Section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina; nor shall they apply to any will made before the first day of January, 1866.

(2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of [India] applicable to all cases of testamentary succession.”

41. Sections 109A was not on the Statute Book when the Indian Succession Act, 1925 came into force. We do not see how the said provision will help the Appellants.

42. The provisions relating to nominations under the various Enactments have been consistently interpreted by the Apex Court by holding that the nominee does not get absolute title to

the property subject matter of the nomination. The reason is by its very nature, when a share holder or a deposit holder or an insurance policy holder or a member of a Co-operative Society makes a nomination during his life time, he does not transfer his interest in favour of the nominee. It is always held that the nomination does not override the law in relation to testamentary or intestate succession. The provisions regarding nomination are made with a view to ensure that the estate or the rights of the deceased subject matter of the nomination are protected till the legal representatives of the deceased take appropriate steps. None of the provisions of the aforesaid Statutes providing for nominations deal with the succession, testamentary or non-testamentary. As observed by the Apex Court, the legislative intention is not to provide a third kind of succession. In **Sarbati Devi**, the Apex Court held in paragraph 5 which reads thus:

“.....But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy-holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy-holder. If that is so, on the death of the policy-holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. **There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a ‘statutory testament’** in para 16 of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36: ILR (1981) 2 Del 315]. If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. **It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary succession is not relaxed even where wills are registered.**”

(emphasis added)

44. Considering the consistent view taken by the Apex Court while interpreting the provisions relating to nominations under various Statutes (including the view in the recent decision in the case of *Indrani Wahi*), there is no reason to make a departure from the consistent view. The provisions of the Companies Act including Sections 109A and 109B, in the light of the object of the said Enactment, do not warrant any such departure. The so called vesting under Section 109A does not create a third mode of succession. It is not intended to create a third mode of succession. The Companies Act has nothing to do with the law of succession. We have gone through every decision and material relied upon by the Appellants to which we have not made a specific reference in this Judgment. We hold that there was no reason to take a view which is contrary to the view taken in the long line of the decisions of the Apex Court on interpretation of provisions regarding nominations. Hence, the view taken in *Kokate’s case* is not correct. We answer the first question in the negative and the third question in the affirmative. The second question is answered accordingly.”

In the above circumstances, this Court is of the view that the bank cannot be blamed for taking the stand it has against the petitioners. The petitioners shall be entitled to operate the locker only upon production of appropriate letters of administration.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)