IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 1602 OF 2019

Sushilkumar s/o Motilal Sharma
(since deceased) through his Legal
Heirs-

1] Smt. Sneha Sushilkumar Sharma,
Aged about 60 years, Occu- Household.

2] Manish Sushilkumar Sharma,
Aged about 32 years, Occu-Service.

3] Ms. Ashima Sushilkumar Sharma,
Aged about 30 years, Occu-Nil.

All r/o Plot No. 59, Near Ramkrishna
Math, Dhantoli, Nagpur.

.... **APPELLANTS**
[Orig. Applicant]
[On R.A.]

...V E R S U S...

1] Umeshkumar s/o Motilal Sharma,
Aged about 62 years, Occu: Nil,
R/o House No. 98, West Park Road,
Dhantoli, Nagpur (Deleted Name)

2] Sunilkumar s/o Motilal Sharma,
Aged about 61 years, Occ-Business.

3] Piyush s/o Umeshkumar Sharma,
Aged about 33 years, Occu - Service,
2 & 3 R/o House No.98, West Park Road,
Dhantoli, Nagpur.

3] Piyush s/o Umeshkumar Sharma,
Aged Major, Occu: Service,
R/o Buyer, WIW, 62/2 Reliance Retail,
2nd Floor, Richmond Road,
Bangalore-560025.

Amendment carry out as
per Registrar (J) order
dt. 17/03/2020
Sd/-
C.F. Appellant
14/12/2020

4] State Bank of India,
Kingsway Branch, Nagpur through
its Branch Manager.

5] Central Bank of India,
Station Road Branch,
Nagpur through its Branch Manager.

6] Punjab National Bank,
Kingsway Branch, Nagpur through
its Branch Manager.

... **RESPONDENTS**
Ori. Non-Applicants
On R.A.

Shri A.C. Dharmadhikari, Advocate for the Appellants.
Shri Piyush Shukla, Advocate for the Respondent No.2.
Ms Ruksar Parveen Sheikh, Advocate h/f Shri Anil Kumar,
Advocate for Respondent No.4.
Mrs Anita Mategaonkar, Advocate for Respondent No.5.
Shri B.N. Mohata, Advocate for Respondent No.6.

CORAM : S.M. MODAK, J.
RESERVED ON : 07.06.2021
PRONOUNCED ON : 11.06.2021

ORAL JUDGMENT

1] Heard finally by consent of learned advocate appearing for the parties.

2] **Admit.**

3] The Court of 4th Joint Civil Judge, Senior Division, Nagpur, as per the judgment dated 25/07/2019 was pleased to dismiss the application of present appellants. It was for grant of Succession Certificate / Letter of Administration / Heirship Certificate. On reading the order, what this Court find is that the trial Court was too much technical in deciding the matter. In respect of certain points, the trial Court has taken rigid view whereas in respect of certain points the trial Court interpreted the law incorrectly.

4] I have heard learned advocate Shri A.C. Dharmadhikari for the Appellants, Shri Piyush Shukla, learned Advocate for the Respondent No.2, Ms Ruksar Parveen Sheikh, Advocate h/f Shri Anil Kumar, learned Advocate for Respondent No.4, Mrs Anita Mategaonkar, learned Advocate for Respondent No.5 and Shri B.N. Mohata, Advocate for Respondent No.6. The Respondent No.3 though served has chosen to remain absent. The appellants have filed the pleadings, documents and evidence as per the Pursis dated 21.09.2020. The appeal was heard on that basis, by consent of both sides.

5] There is certain amount lying in the savings bank account with the State Bank of India. Though account stands in the name of Sushilkumar Motilal Sharma, he claimed that money belongs to the deceased Motilal Sharma. Apart from that, deceased Motilal was also having a locker in the State Bank of India, Kingsway Branch - Respondent No.4, locker with Central Bank of India - Respondent No.5 and Punjab National Bank- Respondent No.6. Though the appellants while filing the application before the trial Court were not aware about the articles kept in the locker, when the Court Commissioner/Advocate Rakesh Ramraj Dwivedi was appointed, it was transpired that three lockers contain cash amount and golden ornaments.

6] The trail Court rejected the application on several grounds. It includes :-

a] Saving Bank account with State Bank of India does not stand in the name of deceased

Motilal.

b] In his affidavit, the deponent Sushilkumar has not mentioned about the details of locker with Central Bank of India and Punjab National Bank.

c] The articles found in the lockers does not fall within the definition of ‘debt’ or ‘security’ as per the provisions of the Indian Succession Act.

d] The appellants are disentitled to the currency notes of Rs.500/-and Rs.1000/- denomination in view of their demonetization issued by the Central Government in the year 2016.

e] The appellant Sushilkumar has not produced any document to show how an amount of Rs. 19,76,034/- is deposited in his own account.

f] When the bank account of deceased Sushilkumar is frozen by State Bank of India, he ought to have filed a civil suit instead of prosecuting the present proceedings.

7] There is reply filed by present Respondent No.6-Punjab National Bank before the trial Court. It is filed before this Court alongwith the Pursis dated 21.09.2020. It is but natural for them to give explanation in respect of averments which pertains to them. The fact of having a locker by deceased Motilal is not denied by them. They pleaded additional fact. Deceased Motilal nominated Respondent No.2 Sunilkumar for locker. The reply filed by other respondents is not filed along with the Pursis. Neither it is pointed out to me by the respective advocates for the respondents. This Court has trusted them. Even the trial court has noted this fact. So it seems that the proceedings were non-contested before the Trial Court. Section 295 of the Indian Succession Act warrants conduct of contentious proceedings to be tried like a suit. This is not the position herein. Deceased Sushilkumar filed affidavit of examination-in-chief on 06.10.2012 and on 11.04.2018 [i.e. after the amendment]. Originally, the appellants only prayed for grant of Succession Certificate. By way of amendment, alternatively they have asked for grant of letter of administration or heirship certificate. They also examined the Court Commissioner / Advocate Rakesh Ramraj

Dwivedi. Except on behalf of Punjab National Bank – Respondent No.6 no one cross-examined the learned Commissioner. On the basis of this evidence, trial Court dismissed the application. After hearing the learned Advocates and perusal of the record, the following points arise for my determination :--

Sr. No.	**Points**	**Findings**
A.	Whether the appellants are entitled to get Succession Certificate/Letter of Administration/Heirship Certificate in respect of the money standing in savings bank account and the articles kept in three lockers?	For money in saving bank account, appellants are entitled for succession certificate. For gold ornaments and cash in three lockers, the appellants are entitled to get letter of administration.
B	Whether the Trial Court committed an error in dismissing the application and whether it requires interference?	In the affirmative.
C	What order ?	As per final order

REASONING

Point Nos. 1 and 2:-

8] The determination of the appeal rests more on the interpretation of legal provisions because most of the facts are admitted. There are two sets of respondents. One set comprises Respondent Nos. 1, 2 and 3. Out of them, the Respondent No.1 Umeshkumar expired during the pendency of this appeal and his son Respondent No.3 - Piyush is the only legal representative. He had chosen to remain absent. Whereas other set of respondent contain three banks i.e. Respondent Nos. 4 to 6. The determination of the appeal also involves certain issues about compliance of the procedure and it is on the background of non-contest by any of the respondent.

9] <u>The undisputed facts as revealed from the record are as follows :-</u>

A] Death of Motilal Mahavirprasad Sharma on 16.07.2012 and death without making a Will.

B] Smt Ramadevi w/o Shri Motilal predeceased Motilal on 05.11.1987.

C] Deceased Motilal was having three sons. Original claimant Shri Sushilkumar, respondent No.1 Umeshkumar and Respondent No.2 Sunilkumar.

D] Holding lockers by deceased Motilal in respondent Nos. 4,5 and 6 Bank.

10] Initially, Sushilkumar filed an application under Section 372 of the Indian Succession Act and prayer was only to issue succession certificate. His two brother's respondent nos.1 and 2 have not contested the proceedings. The three banks have also not contested the proceedings (except Punjab National Bank by filing a reply as mentioned above). Sushilkumar filed affidavit of examination-in-chief on 06.10.2012. From the copy supplied, it is nowhere disclosed that he was cross-examined. In addition to the relief of succession certificate, by way of amendment, he also prayed for grant of Letter of Administration /Heirship Certificate. He filed additional affidavit on 11.04.2018. He was not cross-examined.

11] The Court Commissioner Advocate Rakesh Dwivedi explained the procedure followed by him prior to visiting the three banks for taking inventory of the contents of the lockers. He found following articles:-

Name of the Bank	Locker Number	Description of articles
State Bank of India, Kingsway, Nagpur.	604	Yellow metal articles and Cash of Rs. 26,61,200/-
Punjab National Bank Kingsway, Nagpur.	652	Cash of Rs. 17,52,600/-
Central Bank of India, L.I.C. Square, Nagpur.	1590	Cash of Rs. 3,51,450/-

Except asking as to who has put those articles (during cross-examination by Punjab National Bank) nothing was asked to him. Still the valuation of Yellow Metal has not come on record and that is why valuer Chandrakant B. Vastani was appointed and Assistant Superintendent Prakash Somkuwar attached to Civil Judge Senior Division, Nagpur is also appointed to carry out the work. He gave report dated 02.04.2019. The details of gold articles valued by the Jeweller Vasatani is as follows :-

A] Weight 3389 grams

B] Value Rs. 1,08,44,800/-.

ABOUT MONEY STANDING IN S.B ACCOUNT

12] No doubt it is true that the S.B. account stands in the name of original claimant Sushil Sharma. In the main application, it is pleaded that an amount of Rs. 19,76,034/- is credited to this account whereas the deposit slip produced by Sushilkumar shows an amount of Rs. 19,75,534/-. The Trial Court has emphasised on variance in the said amount. I think the amount mentioned in the deposit slip at Exhibit-56 ought to have been given weightage. Furthermore, the Trial Court has emphasised on the fact that the savings bank account stands in the name of appellant – Sushilkumar and not in the name of deceased Motilal Sharma. There cannot be any dispute about the name standing in the record of State Bank of India. <u>However, when Sushilkumar says that money belongs to Motilal, it means he wants money should not go exclusively to him but his two brothers would also get the amount.</u> It means that he has made a statement detriment to his interest. I find no wrong in accepting his contention. Furthermore, Trial Court observed about non-filing of the suit when this account is frozen by the bank. There is no need to file a suit. If Sushilkumar succeeds in getting succession certificate, State Bank of India is bound to act as per the directions of the Court. Asking the party to file a suit is nothing but prolonging the litigation which is not at all contested.

13] So for above reasons, the Trial Court ought to have issued succession certificate in favour of deceased Sushilkumar. He expired after giving evidence. The certificate could have been issued in favour of his legal representatives which were brought on record. While rejecting the claim in respect of the money in S.B. Account, Trial Court has taken rigid view. Money in savings bank account belongs to the account holder and bank holds it till it is demanded by the account holder. It is nothing but a debt recoverable by the account holder. The appellants are entitled to get succession certificate in respect of this amount.

GOLD ARTICLES AND CASH AMOUNT IN LOCKERS

14] It is true that above two articles cannot be described as debt or security as contemplated in Section 370 of the Indian Succession Act. These two articles were kept in the lockers. Even bank is not aware about the contents of the locker. It is within the domain of locker hirer. It will be material to consider the relationship of the Bank and Locker Hirer. Recently, there is occasion for Hon’ble Supreme Court to consider the relationship in between the bank and locker hirer in case of ***Amitabh Dasgupta V/s United Bank of India*** reported in ***2021 SCC Online SC 124 in Civil Appeal No. 3966/2010.*** The circular dated 04.12.2006 by Reserve Bank of India (in the form of proposal) was referred (para no-7). It was not finalized. Hon’ble Supreme Court [after taking over view of the judgments given by certain High Courts and by the National Commission] has not opined about exact relationship in between the banker and locker hirer. Hon’ble Supreme Court confirmed the decision of National Commission. Limited compensation was granted to the locker hirer in view of admission by the Banker to open the locker. However, the issue about “liability in case of loss of contents of the locker” was kept open to be decided by the Civil Court.

15] So the relationship cannot be considered as that of bailor and bailee as contemplated under Section 148 of the Indian Contract Act. Bank cannot use the contents of locker (just like using the money deposited). Certainly, it cannot be said that bank owes to the locker hirer the contents of the locker. The articles are kept in the locker only for safe custody and they cannot be said to be in the exclusive possession of the banker. So, question arises to whom bank should return the articles after the death of hirer and on the basis of which documents? On this background, it will be material to consider the provisions of the Indian Succession Act. Learned Advocate Shri A.C. Dharmadhikari relied upon the provisions of Section 218 of the Indian Succession Act.

16] Administration of the estate belonging to a person who dies intestate can be granted to any person. In this case, the deceased Motilal was a Hindu. As the Section itself says, letter of administration can be granted if a person dies without making a Will. High Court of Delhi in the case of ***Arti Kapahi V/s State*** reported in ***2006 SCC Online Del 408*** was pleased to observe “letter of administration can be granted even when the Will is not annexed (para-18)”.

17] There was occasion for High Court of Madras to consider the nature of inquiry required to be conducted by the Court granting letter of administration. It is in the case of ***Dr. R.V. Venkatesan V/s D. Jenbagalakshmi and others*** reported in ***AIR 2012 MAD 94*** . It was held as under :-

> *"question of title need not be enquired into, Court has only to consider whether there is a estate at all to be administered. It is not necessary to decide which assets are likely to come to the share of the petitioner".*

18] In this case, the Trial Court has only considered the claim as to entitlement to succession certificate. There is no finding about entitlement to letter of administration. This is dereliction of duty. For above discussion, it can certainly be said that deceased Motilal was having a estate in the form of three lockers and its contents. Generally, a person opens a locker and keep valuables in it for safe custody. <u>So this Court feels that a letter of administration can certainly be granted in favour of the appellants. Because the authority needs to be given to someone who can administer the estate. The estate</u>

cannot remain unadministered.

19] Claimant Sushilkumar has referred about claim by Respondent No.3 Piyush. Piyush claims that he was nominated by deceased Motilal in respect of locker with State Bank of India. On what basis Sushilkumar has made this claim is not clear. Even Piyush has not come forward. Trial Court has referred to this in Para No.31 of the impugned order. There is no finding on this claim. Even otherwise law on the point of nomination is clear. Nominee holds the property on behalf of heirs. So there is no substance in the said claim.

20] Merely because the Government has issued a demonetization policy, it does not mean that the claim as to the requisite currency notes is extinguished. If we go by the report of Assistant Superintendent, we may find that apart from banned currency notes of Rs.500/- and Rs. 1000/- notes of Rs. 50/- and Rs. 100/- denomination were also found in the locker. Trial Court has wrongly rejected the claim *in toto*. Even in respect of banned currency notes, the appellants can approach the concerned authorities and may do the needful. It is very well true that as the claim is pending for adjudication before the trial Court, it was not possible for the appellants to approach the competent authority under the Specified Bank Notes (Cessation of Liabilities) Act, 2017. <u>This Court hope that when approached, the competent authority will consider the claim of the appellants in respect of banned currency notes.</u>

21] The Trial Court has emphasised on 'not mentioning the locker in Central Bank of India and Punjab National Bank' in the affidavit of appellant Sushilkumar. However, trial Court has overlooked the report of Court Commissioner Advocate Dwivedi. In detail, he had given description of the contents of locker with Respondent Nos. 5 and 6. So the details were on record. No doubt it is true that in the affidavit, the appellant Sushilkumar has not described the two lockers. These details do find place in the main application. <u>Trial Court has overlooked the fact that the matter is non-contentious. Trial Court ought not to have taken a rigid view.</u>

22] Once this Court feels that letter of administration can be issued, there is no need to consider the request of grant of heirship certificate. Accordingly, the point Nos.1 and 2 are answered in the affirmative.

THE POINT NO.3

23] There is an argument that original appellant Sushilkumar, respondent No. 2 Sunilkumar and deceased Respondent No.1 Umeshkumar are entitled to succeed 1/3rd each to the estate of deceased Motilal, but this Court feel that "so far as distribution of shares is concerned" is outside the purview of inquiry of the Court considering such claim. The reason is limited inquiry is contemplated. So Court can only grant a letter of administration with direction to administer the estate and distribute it amongst the legal representatives as per their shares as per personal law. As contemplated under Section 291 of the Indian Succession Act, the appellants will have to furnish an administration bond to the extent of Rs. 1,50,00,000/- (roughly the sum total of golden ornaments and cash) in order to ensure that they will administer the estate as per the law. So also the appellants need to execute bond of Rs. 17,00,000/- for due performance of the obligation for distribution of the amount lying in the savings bank account.

24] The claim of the banks to the rent of the lockers is genuine. The appellants have to pay the rent to concerned bank. Hence, I proceed to pass following order:-

O R D E R

1] The appeal is allowed.

2] The judgment dated 25.07.2019 passed by 4th Joint Civil judge, Senior Division, Nagpur in Succession Case No. 83/2014 is set aside.

3] The Court of Civil Judge, Senior Division, Nagpur is directed to issue Succession Certificate in favour of the appellants in respect of Savings Bank Account No.33914081105 State Bank of India, Kingsway Branch, Nagpur.

4] The Court of Civil Judge, Senior Division, Nagpur is directed to issue letter of administration in favour of the appellants to administer the estate of deceased Motilal Mahavir Prasad Sharma in the form of :-

(a) The golden ornaments valuing Rs. 1,08,44,800/-

(b) Cash (the total amount as stated by the Commissioner Shri Dwivedi)

both lying in the three lockers opened with respondent Nos.4,5 and 6 Bank.

5] The appellant Nos. 1 and 2 are directed to execute an administration bond to the extent of Rs. 1 Crore 50 Lakhs (Rupees One Crore Fifty Lakhs only) and bond to the extent of Rs. 17,00,000/- (Rupees Seventeen Lakhs only) within a period of 30 days before the trial court and then only further compliance be made.

6] The appellant Nos. 1 and 2 are directed to distribute the amount in the savings bank account and the cash amount and golden ornaments amongst them and respondent No.2 Sunilkumar Motilal Sharma and Respondent No.3 Piyush Umeshkumar Sharma as per their shares as per the Personal Law.

7] The appellant Nos. 1 and 2 to pay necessary rent / charges to respondent Nos. 4, 5 and 6 for the lockers.

8] The respondent Nos. 4, 5 and 6 are directed to hand over the golden ornaments and the cash amount lying in the respective lockers to the appellant Nos. 1 and 2.

09] The appellant Nos. 1 and 2 are at liberty to approach the competent authority under the provisions of the Specified Bank Notes (Cessations of Liabilities) Act, 2017 or any other relevant law for exchange of banned currency notes found in the three lockers.

10] The appellant Nos. 1 and 2 to pay necessary Court fee.

11] The appellants, respondent No.2 and 3 to bear their costs throughout and to pay the costs to respondent Nos. 4, 5 and 6.

(S.M.MODAK, J)