

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 18.05.2021

+ RFA 310/2020 and CM No. 34490/2020

SMT. SHWETA SINGH HURIA & ORS. Appellants
Through: Ms. Ekta Gambhir, Advocate.

Versus

SMT. SANTOSH HURIA & ANR. Respondents
Through: Mr. Rakesh Wadhwa, Advocate
for R-1.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The Appellants have filed the present Regular First Appeal assailing the preliminary decree dated 16.09.2020 passed by the Trial Court in CS No. 390/2019. Appellant No. 1 herein is Defendant No. 1 before the Trial Court and Respondent No. 1 is the Plaintiff. Defendants No. 2 & 3 are minor children of Defendant No. 1 and are Appellants No.2 & 3 herein, whereas Respondent No. 2 is the husband of Respondent No.1 and was Defendant No. 4 before the Trial Court. Appellant No. 1 was married to Late Sh. Vineet Huria and Respondent No. 1 is his mother.

2. The facts germane for deciding the present appeal are that Respondent No. 1/Plaintiff filed a suit for partition or separation of shares of Respondent No. 1, recovery of Rs. 54,14,077/-, rendition of accounts

and permanent injunction against the Appellants herein and Respondent No. 2, father of Late Shri Vineet Huria.

3. Respondent No. 1 pleaded that her deceased son late Shri Vineet Huria and Respondent No. 2 were sole and absolute joint owners of property bearing No. MIG Flat No. 35, Block-A, Type-B, Pocket-3, Bindapur, Dwarka, New Delhi (hereinafter referred to as '**suit property**'). Shri Vineet Huria died on 11.07.2018 intestate and left behind four Class-I heirs i.e. (a) Respondent No. 1/mother (b) Appellant No. 1/wife (c) Appellants No. 2 & 3/ son and daughter.

4. It was further pleaded that Respondent No. 1 inherited the estate of her deceased son, as he died intestate, to the extent of 1/4th share in his immovable and moveable assets and Appellants were entitled to the remaining 3/4th share. Her deceased son was in a high income group, with numerous properties, including moveable and immovable, in his own name and in the name of his wife and children, besides investments in Demat and Mutual Funds etc., the details whereof were not in the knowledge of Respondent No.1 and needed to be ascertained and identified for partition.

5. It was also averred that the deceased son of Respondent No. 1 had 50% share in the flat at Dwarka, apart from various insurance policies. After his demise, Appellant No. 1 received substantial cash amounts totaling to Rs. 3,12,56,311/- on account of insurance policies, Provident Fund and CGHS medical reimbursement benefits etc. Appellant No.1 was legally obliged to share 1/4th with Respondent No. 1, i.e., Rs. 78,14,077/-, whereas she parted only with a sum of Rs. 24,00,000/-.

6. Upon being served with the summons in the suit, Appellants filed their written statement. In the interregnum, vide order dated 13.05.2019 the learned Trial Court directed the Appellants and Respondent No. 2 to maintain *status quo* with respect to possession of flat at Dwarka and also restrained the Appellants from expending the cash amounts received, as aforesaid.

7. The Appellants, amongst various pleas on merits, in the written statement, took a preliminary objection to the maintainability of the suit on the ground that with respect to the moveable assets of the deceased, succession certificate was required from a Court of competent jurisdiction under Section 372 of the Indian Succession Act, 1925. Preliminary objections regarding pecuniary jurisdiction, Court fee and misjoinder of causes of action were also taken in the written statement.

8. On merits, it was pleaded that the suit property was purchased exclusively out of the funds invested by the deceased husband of Appellant No. 1 and the name of Respondent No. 2 was added in the sale deed out of respect. The entire expenditure on the home furnishing etc. including water electricity bills, was incurred by the deceased. In a nutshell, it was the case of the Appellants that Respondent No. 2 was merely an ostensible owner to the share of 50% of the suit property and not the real owner.

9. It was further pleaded in the written statement that in complete discharge of their share in the suit property Respondents No. 1 & 2 had accepted payment of Rs. 24,00,000/- from Appellant No. 1 towards half share of the suit property as that would have helped in getting the suit

property transferred in the name of the Appellants and also assured execution of Relinquishment Deed in their favour. The amount was paid through two cheques for Rs. 12,00,000/- each and both the cheques were duly encashed. Later however Respondents became dishonest and changed their stand. As far as the insurance policies were concerned, it was pleaded that the deceased husband of the Appellant No.1 had nominated her as a sole nominee and she had an exclusive right over the monetary benefits under them.

10. It was averred in the written statement that the policies are governed by Insurance Laws (Amendment) Act, 2015, which came into force w.e.f. 26.12.2014, whereby the Insurance Act, 1938, which is a Special Law, was amended. By virtue of the amended provision, Appellant No. 1 became a 'beneficial nominee' and was entitled to the benefits under the policies, to the exclusion of Respondents No. 1 & 2. With respect to Provident Fund and other benefits under the Mutual Funds etc., it was averred that the suit was premature as the said amounts had not been received by Appellant No. 1. Reimbursements of medical expenses were for the expenses incurred by her on the treatment of her late husband, at the rates fixed by the CGHS and were paid to her being an employee of Kendriya Vidhyalaya. Respondent No. 1 thus had no right to claim any share in the same.

11. Along with the replication, Respondent No. 1 filed an application under Order XII Rule 6 CPC, 1908 on the basis of an alleged admission by the Appellants in the written statement that Appellant No. 1 had received a sum of Rs. 2,48,53,000/- as well as amounts under Policies

bearing No. 1841177 and 14430566 with ICICI Bank and on that basis 1/4th share was claimed in the application as a Class-I legal heir of Late Shri Vineet Huria.

12. Reply was filed to the application by the Appellants denying that there were any admissions and that the suit was being contested on various legal objections including its maintainability. If the maintainability was decided against them, the claims on merits could only be decided in a full-fledged trial. It was categorically stated that Respondent No. 1 had no right to claim the benefits under the policies as Appellant No.1 was the nominee.

13. Along with the written submissions, Appellants filed an application under Order VII Rule 11 CPC, to which reply was filed by Respondent No. 1.

14. Learned Trial Court decided both the applications by a common order dated 16.09.2020, dismissing the application under Order VII Rule 11 CPC and allowing the application under Order XII Rule 6 CPC. A preliminary decree was passed in favour of Respondent No. 1 directing Appellant No. 1 to transfer/pay a sum of Rs. 54,14,077/- in the account of Respondent No. 1. The impugned order to the extent it has partially decreed the suit under Order XII Rule 6 CPC is assailed by the Appellants before this Court.

15. Learned counsel for the Appellants contended that there was no admission on the part of the Appellants enabling the Trial Court to pass a decree under Order XII Rule 6 CPC. The relief claimed under the said

provision is discretionary in nature and cannot be claimed as a matter of right as held by the Supreme Court in S.M. Asif vs. Virender Kumar Bajaj, (2015) 9 SCC 287. It is a well settled proposition of law that unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny a valuable right of defense to a Defendant, in a full-fledged trial and for this, reliance was placed on the judgment in Hari Steel & General Industries Ltd. vs. Daljit Singh (2019) 3 CLJ 472.

16. It was next contended that the Life Insurance Policies of Late Shri Vineet Huria were governed by Insurance Act, 1938 as amended by Insurance Laws (Amendment) Act, 2015 (hereinafter referred to as '**the 2015 Amendment**') which came into effect from 26.12.2014. Since the policies in question matured after the 2015 Amendment came into force, sub-sections (7) of Section 39, added by the Amendment Act, would apply. By virtue of sub-Section (7), where the holder of insurance policy, in his lifetime nominates his parents or spouse or children or any of them, the nominee(s) shall be beneficially entitled to the amount payable by the insurer, unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

17. To highlight the marked difference the 2015 Amendment brought out, Ms. Gambhir, by way of an illustration pointed out that the newly added sub-Section 39 (7) carves out an exception in favour of a class of nominees and it is under this even a father gets right to the benefits, in case he is a nominee *albeit* under the general law of inheritance, he has

no right being a Class-II heir under the Hindu Succession Act, 1956. The argument is that there is a complete change in law of nomination under the insurance policies and the underlying intent of the Legislature is to honour and respect the will of the insured, with regard to the recipient of benefits under the policies. Under the new regime, nominee gets a beneficial interest in the amounts payable under the Life Insurance Policy, on the death of the assured and no longer remains as a mere collector nominee.

18. It was submitted that amendment to Section 39 was made pursuant to 190th Report of the Law Commission, wherein the judgment in Sarbati Devi vs. Usha Devi (1984) 1 SCC 424 was also considered. In the said decision, the Supreme Court held that nomination would not confer any beneficial interest on the nominee and it is a mere authorization to receive the insurance amount, which can be claimed by the legal heirs of the assured in accordance with law of succession, governing the parties. The judgment has been followed successively by various High Courts in a long line of cases, holding that mere nomination effected under Section 39 shall not deprive the legal heirs to the amount under the Insurance Policies. However, as per Ms. Gambhir, the said judgments would be of no avail to Respondent No.1 as the said decisions are based on the unamended Section 39, while the present case relates to policies which have matured in 2018, post the 2015 Amendment.

19. Learned counsel for the Appellants relied upon the judgement of Rajasthan High Court in Ramgopal & Ors. vs. General Public & Ors., S.B. Civil Misc. Appeal No. 27/2018 decided on 05.04.2019, wherein

according to her, judgement in Sarbati Devi (supra) was distinguished in view of the 2015 Amendment and Court held that wherever the provisions of amended section 39 will be applicable, beneficial nominee shall be entitled to the benefits under the insurance policies, to the exclusion of any other legal heir, who is not a nominee.

20. *Per contra*, Mr. Rakesh Wadhwa learned counsel for Respondent No. 1 opposed the appeal and submitted that the partial decree has been rightly passed by the Trial Court on an application under Order XII Rule 6 CPC. Drawing the attention of the Court to the said provision, learned counsel argued that based on admission of facts in the pleadings or otherwise, orally or in writing, it is open to the Court, at any stage of the suit, without waiting for determination of any other question between the parties, to make such order or give a judgment, having regard to the admissions. Appellant No.1 admitted in the written statement that she had received a sum of Rs. 2,48,53,000/- as well as money under two policies as a nominee of the deceased. Being the mother, Respondent No. 1 is a Class-I legal heir and entitled to 1/4th share and there is no infirmity in the order of the Trial Court, as the admissions were clear and unambiguous.

21. It is argued that reliance of the Appellants on the Insurance Act, 1938 as amended by Insurance Laws (Amendment) Act, 2015 is misplaced in view of the settled law that a nominee does not have an absolute right over the estate of the deceased, as nomination is not a 'Will'. Several Courts have held from time to time that a nominee in an insurance policy only acts as a receiver on behalf of the legal heirs of the deceased policy holder and once the money is received by the nominee,

disbursement under the policy, has to follow the testamentary disposition under the law of succession, which cannot be overridden by the Insurance Act, 1938, even after the said amendment. No judgment has been cited by the counsel for the Appellants which denies a legal heir the right to claim the amounts payable under the Insurance Policy and on the contrary it has been held that a policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no interest during the lifetime of a policy holder. On the death of a policy holder, the amount payable under the policy becomes a part of his estate and will be disbursed in accordance with the law of succession, either testamentary or intestate. Nomination is only for the benefit of the insurer so that he gets a valid discharge of its liability under the policy and is not embroiled in the litigations *inter-se* the legal heirs of the insured. Reliance was placed by Mr. Wadhwa on the following judgments to support his contentions.

- i. Smt. Sarbati Devi & Anr. Vs. Smt. Usha Devi (1984) 1 SCC 424.
- ii. Shipra Sengupta Vs. Mridul Sen Gupta & Ors. (2009) 10 SCC 680.
- iii. Shakti Yezdani & Anr. Vs. Jayanand Jayant Salgaonkar & Ors. Appeal No. 313 of 2015 decided by Bombay High Court on 01.12.2016.
- iv. Smt. Rampali Vs. The State Govt. of NCT of Delhi & Ors. FOA No. 184/2017 decided by Hon'ble High Court of Delhi on 24.04.2017.
- v. Khushboo Gupta Vs. The Life Insurance Corporation of India & Ors. CWJC No. 12012 of 2018 decided on 25.09.2019.

- vi. Oswal Greentech Ltd. Vs. Mr. Pankaj Oswal & Ors. CA no. 410 of 2018 decided by National Company Law Appellate Tribunal, Delhi on 14.11.2019.
- vii. S. Shafeek & Ors. Vs. State of Kerala 2020 SCC Online Ker 636.
- viii. Smt. Ramayee Vs. the Principal Comptroller of Defence & Ors. W.P. (MD) No. 18544 of 2016 decided on 17.02.2020.”

22. Learned counsel for the Respondent had also relied on a judgment of the Rajasthan High Court in Chaini Devi vs. General Public, S.B. Civil Misc. Appeal No. 2302/2018 decided on 11.03.2019, where the Court took note of the amended to Section 39 but decided the *lis* by applying the law laid down in Sarbati Devi (supra) and the judgment of Allahabad High Court in Javitri Devi vs. Smt. Meera Devi & Ors. (2016) 116 ALR 358 and dismissed the appeal. In the said case the wife, daughter and son of the deceased policy holder had claimed benefits under the insurance policy been Class-I legal heirs. The Trial Court had allowed the claim in their favour and against the said order, the nominee filed an appeal staking a claim on the basis of his nomination in the policy. The High Court did not find favour with the contentions of the Appellant on the ground that the Supreme Court in Sarbati Devi (supra) had held that Section 39 of the Insurance Act, 1938 is not intended to act as a third mode of succession and that the expression ‘the amount shall be payable to the nominee’ in Section 39 (6), does not mean that the amount shall belong to the nominee.

23. I have heard the learned counsels for the parties and examined their rival contentions.

24. The relationship between the parties to the lis is that Appellant No.1 is the daughter-in-law of the Respondents herein and the widow of Late Shri Vineet Huria. Appellants No. 2 & 3 are the minor son and daughter of Appellant No. 1 and grandchildren of Respondents No. 1 & 2. Respondent No. 1 had filed a suit before the Trial Court for partition, rendition of accounts, permanent injunction and recovery of Rs.54,14,077/- from the Appellants.

25. During the pendency of the suit, Respondent No. 1 filed an application under Order XII Rule 6 CPC for judgment on admission based on an alleged admission in the written statement filed by the Appellants, that Appellant No. 1 had received as sum of Rs. 2,48,53,000/- as well as the amount under two policies, from ICICI Bank, wherein her deceased husband was the policy holder. Respondent No. 1 claimed 1/4th share in the amounts under the said policies as a Class-I heir of the deceased on the ground that mere nomination of Appellant No. 1 could not defeat her right under the law of succession.

26. The Trial Court by a common order dated 16.09.2020 allowed the application under Order XII Rule 6 CPC and dismissed the application filed by the Appellants under Order VII Rule 11 CPC. Trial Court vide the impugned order held Respondent No. 1 entitled to recover 1/4th share in the benefits under the policies, Provident Fund and medical reimbursement etc. which were valued at Rs. 3,12,56,311/-, in the plaint. From the 1/4th share, which came to Rs. 78,14,077/-, Trial Court excluding a sum of Rs.24,00,000/-, received by Respondent No. 1 and directed payment of balance of Rs. 54,14,077/-.

27. The proposition of law laid down by the Supreme Court in Sarbati Devi (supra) and relied upon by counsel for the Respondent cannot be disputed and is a binding dictum. The Supreme Court held that nomination would not confer any beneficial interest on the nominee under an insurance policy and a nominee is only an authorized hand to receive the insurance amount, which is subject to be disbursement amongst the legal heirs under the law of succession, governing the parties. In fact, the said judgment has been followed subsequently in a long line of judgments not only by this Court but different High Courts from time to time. Relevant paras of Sarbati Devi (supra) are as under:-

“5. We shall now proceed to analyse the provisions of Section 39 of the Act. The said section provides that a holder of a policy of life insurance on his own life may when effecting the policy or at any time before the policy matures for payment nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. If the nominee is a minor, the policy- holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy-holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation or change is notified to the insurer if he makes the payment bona fide to the nominee already registered with him, the Patna High Court CWJC No.12012 of 2018 dt.25-09-2019 insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under Section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the

policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of Section 39 of the Act here. 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 Patna High Court CWJC No.12012 of 2018 dt.25-09-2019 governing the testamentary succession is not relaxed even where wills are registered.

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8. We have carefully gone through the judgment of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. The

Delhi High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law. The second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1)(kb) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment debtor shall be exempt from attachment by his creditors. The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. We find it difficult to treat a nominee as being equivalent to an heir or legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach Patna High Court CWJC No.12012 of 2018 dt.25-09-2019 the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in appreciating the two decisions of the Madras High Court in Karuppa Gounder v. Palaniamma [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] and in B.M. Mundkur v. Life Insurance Corporation of India [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . The relevant part of the decision of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] reads thus: (AIR p. 40, paras 10, 11) "10. In Karuppa Gounder v. Palaniamma [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] , K had nominated his wife in the insurance policy. K died.

It was held that in virtue of the nomination, the mother of K was not entitled to any portion of the insurance amount.

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12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in Fauza Singh case [AIR 1978 Del 276] and in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the 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 nomination only indicates the hand which is authorised to receive the amount, on the payment of which the Patna High Court CWJC No.12012 of 2018 dt.25-09-2019 insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

28. However, the contention of the Appellant is that Section 39 of the Insurance Act, 1938 was amended by The Insurance Laws (Amendment)

Act, 2015 which has come into force w.e.f 26.12.2014 and by virtue of amended sub-section (7) of Section 39, nominee has a beneficial interest in the amount payable under the Life Insurance Policy, on the death of the assured and no longer remains a mere receiver nominee, whose rights under the unamended Section were subject to rights and claims of the legal heirs under the law of succession.

29. In order to appreciate the legal nodus that arises, it is imperative to compare and contrast relevant provisions of the unamended and amended Sections 39, respectively, which are extracted hereunder for ready reference:-

Unamended Section 39:-

"39. Nomination by policy-holder.--(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 applies or has at any time applied:

Amended Section 39:

39. (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom

the money secured by the policy shall be paid in the event of his death.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.

(11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

30. Section 39 was amended by the amending Act No. 5 of 2015 and was pursuant to the recommendations of 190th Report of the Law Commission of India, relevant passages from which are as under:-

The Law Commission's views:-

7.1.12 There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the

insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to s.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13 The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.

Final recommendations of the Law Commission in regard to Section 39:-

7.1.14 After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:

(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.

(b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would

tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.

(c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

Suggested Amendment of Section 39:-

“7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

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(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder

of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

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(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of this Act.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/ are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation: For the purposes of this sub-section the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression 'collector nominee' means a nominee other than a beneficiary nominee."

31. As is evident from a reading of the recommendations of the Law Commission, a distinction was carved out between 'beneficiary nominee' and 'collector nominee' and Section 39 of the Insurance Act, 1938 was amended accordingly, adding sub-Section (7). Beneficiary nominee means a nominee who was entitled to receive the entire proceeds under an insurance policy and a collector nominee means a nominee other than a beneficiary nominee. Keeping this distinction in mind, sub-section (7) of Section 39 was carefully and cautiously drafted and the words used by the legislature are 'beneficial interest'.

32. Perusal of the impugned order of the Trial Court shows that the Appellants had brought the 2015 Amendment to the notice of the Trial Court, including the judgment of the Rajasthan High Court in Ramgopal (supra). But the Trial Court has not even dealt with the legal issue raised before it and allowed the application under Order XII Rule 6 CPC, based on the unamended provisions of Section 39. It is a settled law that the rights of the parties to a *lis* have to be decided in accordance with the statutory provisions and law that prevails on the day the cause of action arises.

33. In the present case, Appellants had specifically flagged the issue of applicability of the amendment to Section 39 on the ground that Late Shri Vineet Huria died on 11.07.2018 and the policy had matured after the Amendment to Section 39, came into force. It was thus incumbent upon the Trial Court to have considered and examined the issue, once the same was raised and highlighted by the Appellants and taken a decision accordingly, with respect to the benefits accruing under the insurance policies, in question.

34. Perusal of the impugned order reflects another error committed by the Trial Court even in the quantum of the amount directed to be paid i.e Rs. 54,14,077/-. The said figure, as aforesaid, has been arrived at by dividing Rs. 3,12,56,311/- into 4 shares, out of which 1/4th share comes to Rs. 78,14,077/- and then deducting Rs.24,00,000/-, the amount already received by Respondent No.1. Thus it is evident that the starting point of the calculation is a figure of Rs. 3,12,56,311/-, which in fact is the sum total of all the benefits claimed in the plaint under the head of moveable

assets, excluding 2 ICICI Policies and includes benefits relating to Provident Fund and medical reimbursement etc. Trial Court erred in not appreciating that in the application filed under Order XII Rule 6 CPC, Respondent No.1 had claimed only Rs. 2,48,53,000/- on account of the policies, referred to in the table in the plaint, from serial numbers 1 to 6 and benefits under Policies bearing No. 1841177 and 14430566 with ICICI Bank. As far as other benefits are concerned they were not claimed in the application and the Appellants had contested the claims on the ground that provident fund had not been received and medical reimbursements were on account of the medical expenses incurred on Appellant No. 1's deceased husband and had been received being an employee of KVS, in her own right.

35. The Trial Court erroneously clubbed all the moveable assets claimed in the plaint with the claims to the policies and decided the entitlement of Respondent No.1 to 1/4th share in all the assets, applying the law of nomination, applicable only to insurance policies under the Insurance Act. In applying the wrong law and criteria, Trial Court also overlooked the fact that in the application the claims were limited to insurance policies.

36. Since the Trial Court has not considered the legal issue of the 2015 Amendment to the Insurance Act 1938, raised by the Appellants, it would be appropriate to remand the matter back to the Trial Court. Accordingly it is directed that the learned Trial Court shall consider the matter afresh, taking into account the respective contentions of the parties and the law on the subject. In so far as the respective claims to other moveable assets

are concerned, excluding the policies, the same shall be decided by the Trial Court, separately and at the appropriate time.

37. Accordingly, the appeal is allowed and the order of the Trial Court dated 16.09.2020 in CS No. 390/2019 is set aside. It is made clear that this Court has not expressed any opinion on the merits of the case and the Trial Court shall decide the issue uninfluenced by any observations made by this Court and in accordance with law and the facts on record.

38. The appeal is disposed of, along with the pending application.

JYOTI SINGH, J

MAY 18, 2021/yo



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