Item-4
sg

28-01-2022

Ct. 8

FA 67 of 2017
CAN 1 of 2016 (old CAN 6133 of 2016)

Supriya Mitra
Versus
Chanchal Kumar Mitra

(Through Video Conference)

Mr. Kushal Paul, Adv.
…for the appellant

Mr. Soumyadeep Biswas, Adv.
…for the respondent

By consent of the parties, the appeal and the application are treated on the day's list and disposed of by this common order.

The short point involved in this appeal is the entitlement of the appellant to receive the entire death benefits of her deceased husband.

The undisputed facts emerged from the pleadings are that; one Prabir Kumar Mitra, since deceased, was an employee of CESC Limited. The said deceased had three issues from his first marriage: the two plaintiffs and a sister of the plaintiffs. Upon the death of his first wife, Prabir Kumar Mitra married the appellant herein. The parties have earlier submitted and confirmed that in respect of the provident fund dues, Prabir Kumar Mitra had indicated that his two sons would be entitled to 40% each of the amount lying to his credit and his second wife would be entitled to the balance 20% thereof. It is not in dispute that the provident fund money has been shared in such ratio.

The dispute arose further with regard to the share of gratuity. The appellant contended that since she was the nominee in terms of the relevant Rules of the employer, she is entitled to the entirety of the gratuity sum along with commuted value of the pension. It is not in dispute that the appellant is a nominee and it is a settled law that a nominee may receive the said amount on behalf of the deceased as a custodial for disbursement of the said amount amongst the rightful claim as per the Law of Succession. The said Rule cannot be led to defeat such Law of Succession.

We find from record that the appellant had deposited the principal amount also covered by the decree amounting of Rs.5.50 lakh. We do not find any reason to interfere with the order passed by the learned Judge as a recent judgment was pronounced on proper consideration of the law on this point following the ratio in *Sarbati Devi Vs. Usha Devi* reported in *1984 (1) SCC 424* and the subsequent decision *Shipra Sengupta Vs. Mridul Sengupta & Ors*. reported in *(2009) 6 SCC 724*, where it has been made abundantly clear that any amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. A nominee does not stand on a better footing than a legal heir who is entitled to retiral dues including provident fund under the Law of Succession. Widowed wife as the nominee, cannot claim entire amount of retiral benefits for herself.

In such view of the matter, we do not find any reason to interfere with the decree passed by the learned Civil Judge (Senior Division), 2nd Court, Krishnanagar, Nadia.

The appeal fails.

However, the decreetal amount of Rs.5.50 lakh deposited with the learned Registrar General shall be paid by bank draft/RTGS to the respondent with accrued interest upon proper identification within ten days from the date of communication of this order by either of the parties.

The appeal and the connected application are, accordingly, disposed of.

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

(Ajoy Kumar Mukherjee, J.) **(Soumen Sen, J.)**