8 **14.07.2022**

gd/ssd

FMA/195/2022
IA NO: CAN/1/2022
ASIM RAY
VS
INDIAN BANK AND ORS.

Mr. Biswajit Sau
..for the Appellant.

Ms. Jayeeta Sinha,
Mr. Ranjit Rajak
..for the State.

Mr. Arijit Chatterjee,
Mr. Arani Das,
Ms. Sharmistha Dhar,
Mr. Joydeep Mukherjee
..for the Respondent Nos.3 and 4.

This appeal is at the instance of the writ petitioner challenging the interlocutory order of the learned Single Judge dated 16.08.2021 passed in WPA 11586 of 2021 whereby the learned Single Judge has held the respondent no.4 entitled to operate the bank account freely and has directed that the survivor shall be a trustee for 50% of the value of the said amount and also directed for the registration of the FIR if not registered.

Limited grievance raised by the learned counsel for the appellant is that in terms of the judgment of the Hon'ble Supreme Court in the matter of *Indranarayan v. Roop Narayan and Another* reported *in 1971 (2) SCC 438* and Bombay High Court in the matter of *Krushanadas Nagindas Bhate v. Bhagwandas*

Ranchhoddas reported in *AIR 1976 Bom 153* all the three heirs of the deceased father of the appellant, namely, the appellant, brother i.e. respondent no.3 and mother i.e. respondent no.4 are entitled to 1/3rd share each in respect of the deposit in the bank account. Even though the bank account was a joint account in the name of the father and respondent no.4 with the condition of either or survivor, yet the claim of each of the heirs will be to the extent of 1/3rd. He has further submitted that the direction to register the FIR has wrongly been passed.

Learned counsel for the respondent nos.3 and 4 has raised the submission that the amount deposited in the account was the exclusive earning of the husband of the respondent no.4 and that the appellant was not in touch with the family for about 20 years and that he has good income being an employee of the Insurance Company whereas the respondent no.4 is aged about 81 years and has no source of income.

The above submission of the learned counsel for the respondent nos.3 and 4 has been disputed by the learned counsel for the appellant.

Having heard the learned counsel for the parties and on perusal of the record, we find that the writ petition is yet to be heard finally by the learned Single Judge and issues raised in the writ petition are to be decided. It has been pointed out to this Court that the pleadings are already complete in the writ petition. Even if the version of the appellant is accepted, then also the respondent no.4 will be entitled to the amount to the extent of 1/3rd. Since it has been pointed out that no amount has been released to the respondent no.4 by the bank and she is in need of money, therefore, we direct that meanwhile till the writ petition is decided, the respondent no.4 will be entitled to withdraw the amount to the extent of 1/3rd of the deposit existing in the bank. This withdrawal will be subject to final outcome of the writ petition and without prejudice to the rights of the parties.

We are also of the view that the direction relating to the registration of the FIR in the writ jurisdiction ought not to have been issued and the same runs counter to judgment of the Hon'ble Supreme Court in the matter of Sakiri Vasu reported in (2008) 2 SCC 409. Hence, the said direction is set aside.

The appeal is accordingly disposed of expressing hope that the learned Single Judge will make an endeavour to hear the writ petition itself as expeditiously as possible.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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