

8th June,
2023
(AK)
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W.P.A 12621 of 2023

Syeda Shamima Nasrin
Vs.
Reserve Bank of India and others

Ms. Reshmi Ghosh
Mr. Soumya Sankar Chini
...for the petitioner.

Mr. Manik Das
Mr. Arindam Chatterjee
...for the respondent no.5.

Affidavit-of-service filed in court today be kept on record.

Despite service, none appears for the UCO Bank.

Learned counsel for the petitioner submits that the petitioner is the widow of late Swapan Kumar Sarkar, who was one of the partners of a partnership firm.

The other partner, it is contended, was the respondent no.5, who is the brother of the deceased husband of the petitioner.

Learned counsel places reliance on Clauses 6, 12 and 16 of a partnership deed, annexed to the writ petition, to urge that as per the said clauses, the deceased husband of the petitioner was a sixty percent shareholder in the profit and loss of the business.

That apart, Clause 16 categorically stipulates that upon demise of one of the partners, the heirs of the

deceased partner will step into his/her place and the firm will carry on its business even if no reconstitution of partnership takes place.

Clause 12, on the other hand, provides that the Bank account in the name of the firm shall be operated by the first part (the husband of the petitioner, since deceased) or by his authorized representative/constituted attorney.

It is argued that Clauses 16 and 12, read in conjunction, clearly indicate that the petitioner, as the widow of the deceased partner Swapam Kumar Sarkar, is entitled to step into the shoes of the said deceased and as such, operate the Bank Account-in-question.

However, when the petitioner sought to assert such right, the UCO Bank, that is, the respondent no. 3 herein, with which the account of the partnership firm is lying, refused to honor the said clauses of the partnership agreement by recognizing the petitioner as a partner in place and stead of her deceased husband.

As such, learned counsel for the petitioner argues that since the petitioner has also annexed a marriage certificate under the Special Marriage Act to establish *prima facie* her marriage with the deceased Swapam Kumar Sarkar, there cannot be any dispute regarding the entitlement of the petitioner to operate the Bank account and the UCO Bank has acted *de hors* the law in not permitting the petitioner to do so.

By way of interim relief, it is contended, at least the respondent no.5 ought to be restrained from operating the Bank account for the present.

Learned counsel appearing for the private respondent no.5 seeks to place reliance on photocopies of certain documents.

Such documents, *inter-alia*, include a purported subsequent partnership deed dated December 31, 2020, in which the deceased Swapn Kumar Sarkar was also shown to be a signatory and a partner.

It is *prima facie* shown from the said document that there was a reconstitution of the partnership and subsequently, several amendments were brought about to the original partnership deed, which is sought to be relied on by the petitioner and is annexed to the writ petition.

That apart, learned counsel for the private respondent also places reliance on a birth certificate of one Suhasini Sarkar, who is alleged by the private respondent to be the daughter of the deceased Swapn Kumar Sarkar from his first, legitimate marriage.

In such view of the matter, it is argued that the petitioner's status as a widow of the deceased Swapn Kumar Sarkar itself is disputed, since under the Hindu Marriage Act (the deceased was of the Hindu faith) as well as the Special Marriage Act, no second marriage could be contracted during subsistence of the previous valid marriage.

Although learned counsel for the petitioner categorically disputes the veracity of the said documents and submits that those are subject to proof, without taking elaborate evidence and examining witnesses as well as the original documents being proved and ascertained by the court, it is not possible to adjudicate conclusively the dispute raised by the private respondent no.5.

Not only has the status of the petitioner as the legal heir of the deceased Swapnan Kumar Sarkar been disputed on the basis of purported documents, the subsistence of the partnership deed on which the petitioner relies has also been challenged on the ground that there have been subsequent reconstitutions of the partnership and execution of other partnership deeds.

It is entirely beyond the domain of the writ court to decide such intricate questions of fact and law on merits upon taking elaborate evidence.

Hence, although the dispute apparently raised before this court is an alleged inaction on the part of the UCO Bank, the same hinges entirely upon a civil adjudication of the right, title and interest of the private parties, which can only be canvassed before and decided by a competent civil court.

Accordingly, WPA 12621 of 2023 is disposed of by granting the parties liberty to approach a competent civil

court for the remedies as sought in the present writ petition.

If so approached and any interlocutory application is filed in connection therewith, the said civil court shall take up and decide both the suit itself as well as all interlocutory applications made in connection therewith without being swayed by any of the observations made herein and shall independently decide the merits of the contention of the parties.

Since copies of two documents handed over by learned counsel for the respondent no. 5 have been referred to in the above order, the learned advocate appearing for the private respondent no.5 shall hand over photocopies of the same to his counterpart appearing for the petitioner by tomorrow, that is, June 9, 2023.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)