

AD-20
Ct No.09
20.06.2023
TN

WPA No. 28758 of 2022

Sandhya Roy @ Sandhya Rani Roy
Vs.
The State of West Bengal and others

Mr. Nilanjan Bhattacharjee,
Mr. Brajesh Jha,
Mr. Abhijit Saha,
Ms. Megna Dutta,
Mr. Neel Chakraborty,
Mr. Abhilash Chatterjee

.... for the petitioner

Mr. Wasim Ahmed,
Mr. Sk. Md. Masud

.... for the State

Mr. R.K. Jha,
Mr. M. Thakur

.... for the respondent nos. 2 to 4

Learned counsel for the petitioner submits that the petitioner's elder sister went missing in the year 2013. A missing diary in that regard is annexed to the present writ petition. It is submitted that within the contemplation of Section 108 of the Indian Evidence Act, 1872, the presumption is, in a case where a person is missing for more than seven years, is that she is dead, unless the contrary is proved.

In the absence of any rebuttal, such presumption ought to have been taken by the respondent-Bank in the present case.

However, when the petitioner sought for transfer of maturity amount on certain deposits with the Bank, some of which were in the joint name of the petitioner and her elder sister and some only in the name of her elder sister, the Bank refused the same vide communication dated November 30, 2022 (Annexure-P/8 at page-42 of the writ petition). The grounds furnished for such refusal were that the petitioner was to provide the death certificate of her elder sister or any order from a competent court of law declaring the death of Mrs. Manju Ghosh Chowdhury, the said elder sister.

It is submitted that the proposition of law is well-settled by several judgments of this court that in such cases, unless rebutted, a presumption has to be drawn by the authorities in favour of the demise of the missing person without any further declaration from a civil court.

In support of such proposition, learned counsel for the petitioner cites three judgments. In the first judgment, reported at *(2015) 3 Cal LJ 23 (Shipra Chatterjee vs. Union of India)*, a Division Bench of this court, by placing reliance on Section 108 of the Evidence Act and another judgment of the Supreme Court reported at *(2004) 10 SCC 131 (LIC of India vs. Anuradha)*, arrived at an opinion in consonance with

the proposition sought to be advanced by the petitioner. A similar proposition was reiterated by two coordinate Benches of this court in *Narayan Nayak vs. State Bank of India And Ors.* reported at 2002 (2) CLR 639 as well as in *Smt. Ruda Devi and another vs. Coal India Ltd. and others*, reported at 2014 (4) Cal. H.C.N. 570.

Learned counsel appearing for the respondent-Bank fairly concedes to the legal proposition as relied on by the petitioner. However, it is submitted that for abundant caution and in order to discharge its burden befitting a prudent man under the Negotiable Instrument Act, the Bank requires at least a succession certificate to be produced for the purpose of ascertaining the heirship of the petitioner with regard to the accounts held jointly and singularly in the name of her elder sister.

In view of the submissions of the parties, WPA No. 28758 of 2022 is disposed of in the light of the observations made by the judgments cited by the petitioner, by granting leave to the petitioner to produce a valid succession certificate obtained from a competent court of law with regard to the movable properties of the elder sister of the petitioner Mrs. Manju Ghosh Chowdhury.

Upon the petitioner furnishing such certificate, the respondent-Bank, that is, the Indian Bank, (previously Allahabad Bank) shall release the maturity amounts on the deposits lying with the said Bank in the name of the said Mrs. Manju Ghosh Chowdhury, jointly and/or singularly in her own name, on the presumption that the said deposit-holder is deceased.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)