WPO/1489/2023

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

Mukesh Bhansali

VS

Life Insurance Corporation of India & Ors.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 22nd August, 2023.

Mr. Prantik Garai with
Ms. Mou Saha &
Ms. Antara Biswas, Advs.
… for the petitioner.

Mr. Kushal Chatterjee with
Mr. Mohan Lal Banerjee,
Mr. Saptarshi Mal &
Mr. Oishik Chatterjee, Advs.
… for the respondent no.1-4.

The Court: The petitioner contends that the petitioner's daughter had opened a policy with the respondent Corporation which was subsequently assigned and gifted to the petitioner's wife. On the demise of the petitioner's wife, subsequently, she left behind a will where the petitioner was the beneficiary. A probate of the said will was obtained in the year 2017. Thereafter, the petitioner applied for disbursal of the amount in respect of the policy in favour of the petitioner on the strength of such probated will.

Since the petitioner's probate had been lost, upon being asked to do so by the LICI, the petitioner obtained a certified copy of the same and produced it before the LICI. However, the LICI has not disbursed such amount, for which the present application has been filed.

Learned Counsel appearing for the LICI places reliance on Sections 332 and 333 of The Indian Succession Act, 1925 and submits that unless assent to the legacy is given by the executor, who apparently resides in Mumbai, the LICI cannot release the amount to the petitioner on the strength of the Will. It is further contended that subsequent to the probate being granted, an amendment was carried out to the Affidavit of Assets at the behest of the petitioner which pertains to the LICI policy no., which is also one of the reasons for the Corporation being apprehensive in that regard.

Learned Counsel for the petitioner, in reply, submits that the appropriate stage for the assent being given to legacy is prior to the probate being granted. In any event, it is argued that upon the grant of probate by a competent Court, non-production of the assent to legacy cannot be a deterrent to the petitioner claiming on the basis of the will.

A perusal of the will, a copy of which is annexed to the present writ petition, indicates that although the LIC policy in question was not mentioned in specific terms, one of the phrases used in the will is "other immovable assets", which obviously also includes the LIC policy.

As regards the amendment of the Affidavit of Assets regarding the number of the policy, since such amendment was granted duly by a competent Court, the same cannot be reopened at this juncture and relates back to the date of grant of the probate. Hence, the mere fact of such amendment being carried out, cannot give rise to unnecessary apprehension in the mind of LICI authorities with regard to the veracity of the claim of the petitioner.

Insofar as the assent to legacy is concerned, the language of Section 332 is that the assent of the executor or administrator is necessary to complete a legatee's title to his legacy. Section 333 provides in sub-section (1) thereof that the assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator therein, and to transfer the subject of the bequest of the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way. Sub-section (2) thereof provides that the assent may be verbal and it may be either express or implied from the conduct of the executor or administrator.

A composite reading of Chapter VIII of the 1925 Act, which pertains to the assent to a legacy by executor or administrator, would indicate that there is no hard and fast rule that the assent to legacy has to come in writing or in express manner.

In the present case, the very fact that the probate was granted as long back as in the year 2017, that too, on the probate application of the executor himself, leaves no manner of doubt pertaining to the executor not being opposed to the assent to legacy.

Section 336 of the 1925 Act contemplates that assent of the executor or administrator to a legacy gives effect to it from the death of the testator. Section 337 thereof, on the other hand, provides that an executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death. Section 337, thus, does not put any fetter to the assent being given either prior to or subsequent to the probate being granted.

In the present case, the conduct of the executor all through, in filing of the application for probate, obtaining the probate and subsequently not opposing the claim of the petitioner at any point of time before any forum, is sufficient to indicate that there was an implied assent to legacy on the part of the executor. As such, the respondent authority cannot, in the pretext of non-production of the assent to the legacy, withhold the dues of the petitioner, as the legitimate owner of the amount due to the petitioner, in terms of the policy in question.

Hence, WPO/1489/2023 is allowed, thereby directing the respondents to disburse the amount due with regard to the policy in question bearing no. 415107180 in favour of the petitioner at the earliest, positively within three weeks from date.

There will be no order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

K. Banerjee
A.R. (C.R.)