

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Order reserved on: 27 February 2023**
Order pronounced on: 17 April 2023

+ **TEST.CAS. 77/2019**

MR. M.G. RAMACHANDRAN Petitioner
Through: Petitioner in person.

Versus

MS. RATNA KAPUR & ANR. Respondents
Through: Mr. Jayant Kumar Mehta, Sr.
Adv. with Mr. Sulabh Rewari,
Ms. Mansi Binjrajka & Mr.
Raghav Bhatia, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. This petition purporting to be under Section 301 and 302 of the **Indian Succession Act, 1925¹** has been preferred seeking the following reliefs:

“(i) appoint an Administrator in respect of the estate of Late Shri R. K. P. Shankardass in terms of the provisions of Sections 301 and 302 of the Indian Succession Act, 1925;

(ii) direct the Respondent No.1 to render true and full accounts of the estate /properties of Late Shri R.K.P. Shankardass in her possession and control as well as distribution thereof including the immovable property(ies) other than those listed in Schedule 'A' to 'D' herein;

(iii) direct the Respondent No.1 to deposit all the amounts received from the estate of Late Shri R.K.P. Shankardass

¹ Succession Act

either as nominee or beneficiary in the Executor Account bearing No. 50100157899116 held with HDFC Bank, New Friends Colony, New Delhi - 110065.

(iv) to pass any other appropriate order / direction as may be deemed fit and proper in the facts and circumstances of the present case.”

2. The petition itself emanates from certain disputes which appear to have arisen amongst the executors named in the registered Will dated 15 February 2014 executed by the late Mr. R.K.P. Shankardass, a renowned and celebrated senior counsel of this Court.

3. The dispute centers upon the interpretation to be accorded to Clause 8D of the last testament of the late Mr. Shankardass. However, before proceeding further it would be relevant to notice certain essential facts.

4. The petitioner as well as respondents 1 and 2 were named as the executors of the bequest made by the late Mr. Shankardass in terms of his Will dated 15 February 2014. It would be pertinent to note that the petitioner and the second respondent, though named as executors, are not beneficiaries under the Will. The respondent no.1, the niece of the testator, is undoubtedly a beneficiary. Differences appear to have arisen between the executors with respect to the manner of distribution of properties set out in Schedule B and relating to Clause 8D of the testamentary bequest made by the late Mr. Shankardass.

5. For the purposes of evaluating the questions which stand raised, it would be pertinent at this stage to briefly notice some of the salient provisions which were made by the testator in terms of the bequest in question. In accordance with Clause 3 of the Will, the testator had

provided that the property situate at Mussoorie and known as 'Bansuman' was in the sole and absolute ownership of his late wife. In terms of the Will executed by her, she had bequeathed the said property to be held jointly by respondent no.1 along with the testator. However, she had also provided that upon the demise of the testator, it would devolve upon respondent no.1 as her absolute property. The aforesaid wish of the wife of the late Mr. Shankardass has been duly honoured under the Will which forms the subject matter of the present proceedings.

6. Clause 4 of the Will sets out particulars of four bank accounts maintained by the testator in New Delhi. The Will in Clause 5 then proceeds to set forth details of a joint bank account which was maintained by the testator as well as his late wife. The Will recites that the aforesaid account essentially holds funds garnered from the personal investments made by the wife of the testator and which were credited to the aforesaid account. The testator proceeds to declare that after the death of his wife all proceeds standing to the credit of that savings bank account had been transferred to the Standard Chartered Bank which was being administered by him.

7. In Clause 6, the late Mr. Shankardass made provisions with respect to the distribution of funds, deposits and investments held in a bank at Burlington, Ontario, Canada. In accordance with Clause 6B, the testator had provided that any balance that may be left in that account would be divided equally and devolve upon the individuals named therein. Similar provisions were made in respect of a bank account maintained at NatWest Bank, London in Clause 7. The

testator provided that all balances in that account after his demise would go to respondent no.1.

8. Since the principal dispute arises out of the provisions made in Clause 8 and more particularly sub-clause D thereof it would be apposite to extract the said clause in its entirety hereinbelow: -

“8. Out of the balances in my three 'New Delhi Bank Accounts' and either by encashing or transferring the investments in the portfolios being handled by the three banks on my behalf (based on the value of any such investment transferred to be determined by my executors - which shall be final), I bequeath the following legacies free of any duty (in addition to any contributions or gifts made by me to any of them during my life time):

- A. A sum of Rs. Five Lacs (Rs. 5,00,000/-) to be paid to each of (1) the Bar Association of India; (ii) The Supreme Court Bar Association; (iii) The Delhi High Court Bar Association; (iv) The Indian Society of International Law; (v) Centre for Feminist Legal Research; (vi) SOS; (vii) Shruti; (viii) Deepalaya; (ix) Oxfam; and (x) Udayan Care. These are organizations to which I have made donations from time to time. I would wish that my legacies and any other payment hereunder or otherwise to Oxfam are used, as far as possible, for the benefit of the girl child or for legal literacy (awareness of rights) for women and/or animal welfare.
- B. A sum of Rs. Three Lacs (Rs. 3,00,000/-) each to Mr. Baldev Sharma and Mr. K. L. Kapur; Rs. Two Lacs (Rs. 2,00,000/-) to Mr. Darshan Singh; Rs. One Lac Fifty Thousand (Rs. 1,50,000/-) each to Mr. Baisakh Singh and Mr. Shakti Charan Thapa, failing which to their respective wives if having at the time of my death; and Rs. Fifty Thousand (Rs. 50,000/-) each to Mr. Ram Singh and Smt. Banaspati at Bansuman, Mussorie if each of the said two beneficiaries is living at the time of my death.
- C. A sum of Ten Thousand Canadian Dollars (Canadian \$ 10,000/-) to each of my dear sisters Satya and Raj.
- D. A sum of Rupees Fifty Lacs (Rs. 50,00,000/-) each to my nieces Ratna and Naina in cash or by transfer of mutual funds or investments (in addition to the investments I have already made with them on either or survivor basis); and I give a sum equivalent to Rs. Fifty Lacs (Rs. 50,00,000/-) to my nephew Uday and Rs. Thirty Lacs (Rs. 30,00,000/-) each to my nieces

Shaila and Raina and my nephew Shammit (in addition to other provisions).”

9. The testator also made provisions with respect to a flat situate in Regency Park-II in DLF, Gurgaon and declared that it had for all practical purposes been handed over to respondent no.1 and that consequently it would devolve upon her as absolute owner upon his passing. It was further stipulated in Clause 9 that the interest of the testator in any other flat would devolve upon the surviving co-owner if held jointly and any property being held by him individually would devolve with one-half share going to Uday and the other half equally to the charities specified in Clause 9. A bequest was also made in respect of another niece Naina with the testator providing in Clause 10 that the flat in Crestview, Wildflower Country, Gurgaon in which he had contributed certain funds would ultimately devolve upon the niece aforementioned and she would thus become the exclusive owner thereof.

10. The testator along with his wife is stated to have been residing at B-12, Maharani Bagh, New Delhi. The respondent no.1 is stated to have grown up in that house along with the testator and his wife since 1975. Insofar as the aforesaid residential premises is concerned, the late Mr. Shankardass made the following provisions: -

“12. In accordance with the mutual agreement and desire of Ramma and myself, we agreed to bequeath to take effect upon the death of the survivor of us and subject to the provisions in Ramma’s will (a copy whereof is Annexure to this Will), a life interest in our house at B-12 Maharani Bagh, New Delhi to Ratna who has grown up with us since 1975 (I bequeath my share accordingly) subject to the following which have been agreed between my wife Ramma and me:

A. If the house is not sold during my lifetime, Ratna will have the right to live in the house during her lifetime. However, should she rent any part of or the whole house,

as also mutually agreed between me and my wife Ramma, the income therefrom shall be divided/distributed by Ratna as follows:

- i. Out of the First 50% of the income, retain 25% for Ratna's own use or disposal as she desires;
 - ii. Donate 25% to 'The Handoo Trust' established by my wife Ramma during her lifetime with a gift of £ 100,000/- at her old school, Queenswood in Hertfordshire in England, the Income from which is to be used firstly, for a generous suitable award to be known as the 'Handoo Award for Excellence' (for all-round academic and comprehensive excellence in performance) for a student at the school; and secondly, the remainder of the income to be used to support a 'Handoo Bursary' established at the School in accordance with a Trust of November 2010 executed by Ramma for a girl of Indian origin living in the United Kingdom and selected on the basis of merit and whose parents would be unable to meet the full fees at the School;
 - iii. Out of Second 50% of the income, 30% to be divided amongst Naina, Shaila, Raina and Uday; and
 - iv. 20% to be divided between the charities mentioned at items (vi) to (x) of Paragraph 8A above.
- B. Similarly if the house remains unsold, Ratna will have the right to sell the house during her lifetime and if she does so, out of the first 50% of the net sale proceeds, she may retain 25% for herself or disposal by her as she desires, apply 25% as provided in Paragraph 12A (ii) above; and out of the second 50% of the sale proceeds, 30% to be divided amongst Naina, Shaila, Raina and Uday; and 20% to be divided equally amongst the charities mentioned in items (vi) to (x) of Paragraph 8A above.
- C. If the house remains unsold during Ratna's lifetime, then it shall be sold immediately thereafter through Mr. M. G. Ramachandran, Advocate or anyone appointed by him, failing which through Ms Sarita Kapur, Advocate or anyone appointed by her for the purpose and the first 50% of the net sale proceeds disbursed as provided in Ramma's separate Will and as updated and set out in Paragraph 12 A (i) and (ii) above, i.e. 25% to be donated to the 'Handoo Trust' and 25% according to Ratna's

instructions in her will or otherwise; and the second 50% shall be divided and disbursed amongst the same parties in proportions as set out in the preceding Paragraph 12B above i.e. 30% to be divided amongst Naina, Shaila, Raina and Uday and 20% to be divided among the charities mentioned at items (vi) to (x) of Paragraph 8A.”

11. Clause 13 constituted the residuary provision and reads as follows: -

- “13. SUBJECT TO THE ABOVE, upon my death, I give all or any of my property whatsoever and wheresoever as follows:
- A. All fixtures, fittings, furniture, carpets, paintings etc. to be retained by or dealt with as decided/instructed by Ratna in consultation with Ms. Sarita Kapur; and
 - B. As to the rest in cash or kind, 75% equally to Ratna, Naina, Shaila, Raina and Uday and 25% to the Charities mentioned in items (vi) to (x) of Paragraph 8A.”

12. In terms of the provisions made in the Will, the executors appear to have bifurcated the debts and securities into Schedules A and B with the latter setting out the debts and securities in which respondent no.1 was named as the nominee. Schedule C sets out details of the immovable properties which had been settled in terms of the Will.

13. The dispute between the executors essentially appears to stem from the claim of the first respondent who asserted that since she stood designated as the nominee in the Schedule B securities, those were to come to her exclusively in accordance with the provisions made in Clause 8D. Clause 8D, as would be evident, had provided that all securities which may have been created and held by virtue of the balances available in the three New Delhi bank accounts would be distributed in the following manner: -

“8. Out of the balances in my three 'New Delhi Bank Accounts' and either by encashing or transferring the investments in the portfolios being handled by the three banks on my behalf (based on the value of any such investment transferred to be determined by my executors - which shall be final), I bequeath the following legacies free of any duty (in addition to any contributions or gifts made by me to any of them during my life time):

- A.
- B.
- C.
- D. A sum of Rupees Fifty Lacs (Rs. 50,00,000/-) each to my nieces Ratna and Naina in cash or by transfer of mutual funds or investments (in addition to the investments I have already made with them on either or survivor basis); and I give a sum equivalent to Rs. Fifty Lacs (Rs. 50,00,000/-) to my nephew Uday and Rs. Thirty Lacs (Rs. 30,00,000/-) each to my nieces Shaila and Raina and my nephew Shammit (in addition to other provisions).”

14. In terms of sub-clause A, the testator made a bequest of Rs.5 lakhs each to various institutions as per the details set forth therein. In terms of sub-clause B, a sum of Rs.3 lakhs each was bequeathed to the personal staff and attendants of the late Mr. Shankardass. By virtue of Clause 8C, a sum of 10,000 Canadian Dollars was made over to his two sisters. Sub-clause D prescribed that a sum of Rs.50 lakhs each would be paid to respondent no.1 and Naina, the nieces of the late Mr. Shankardass, either in cash or by liquidation and transfer of mutual funds and other investments. An equivalent amount of Rs.50 lakhs was provisioned to be made over to another nephew Uday and Rs.30 lakhs each to his nieces Shaila and Raina and nephew Shammit. The bequest in favour of respondent no.1 and Naina was qualified with the testator declaring that the sum of Rs.50 lakhs provisioned for would be “*in addition to the investments*” already made with them “*on either or survivor basis*”. It is the usage of the italicized phrase

extracted above which constitutes the foundation of the differences which have arisen amongst the executors.

15. Before this Court it is not disputed that the Schedule B securities were held by late Mr. Shankardass exclusively as opposed to being jointly held and controlled. It is also not the case of the first respondent that those securities were jointly held by her along with the testator. It is however her contention that since she was named as a nominee in respect of those securities the same read along with Clause 8D confers upon her a right to claim those securities independently and to the exclusion of all others. It is in the aforesaid light that it was asserted that the Schedule B securities are not liable to be distributed in accordance with Clause 13 of the Will. It is principally in light of the aforesaid dispute and consequent to the first respondent having apportioned those securities in her own favour and to the exclusion of all others that has led to a deadlock and the breakdown of cordial relations amongst the executors.

16. On 11 October 2021 the Court disposed of an interlocutory application relating to the liability of parties to pay requisite court fee for the issuance of a succession certificate. The Court also made provisions for certain amounts being placed in the hands of the petitioner to enable him to meet liabilities towards tax payments and other expenses. The petitioner and the first respondent were also directed to execute indemnity and surety bonds in terms of the directions issued by the Additional Civil Judge before whom the subject of issuance of the succession certificate was pending. The Court also took on board on that date the statement of the second

respondent who had expressed her desire to be discharged from being required to act as an executor of the Will in terms of her e-mail dated 23 September 2019. The aforesaid prayer was duly accepted and the second respondent consequently came to be discharged and relieved of the obligation of being an executor of the Will of the late Mr. Shankardass.

17. On 16 August 2022 the Court framed further directions calling upon the petitioner and the first respondent to open a new bank account so that further proceedings could be taken for administering the estate of the deceased. However, and as is evident from the material placed on the record, consequent to the second respondent having resigned and the two remaining executors being unable to concur on the interpretation to be accorded to Clause 8D has led to an impasse and no effective steps have thereafter been taken in respect of administration of the estate of the deceased.

18. Mr. Ramachandran, the petitioner who appeared in person has taken the Court through the various developments which ensued post the demise of the testator. It was his case that the first respondent by virtue of being named as a nominee is only entitled to collect the proceeds of the Schedule B properties. However, according to the petitioner, the proceeds thereof are liable to be distributed in accordance with Clause 13B of the Will. The petitioner questions the validity of the stand struck by the first respondent and of the right asserted by her to succeed to the Schedule B properties exclusively. It is further asserted that moving on that assumption the first respondent

has proceeded to encash a substantial part of Schedule B properties. That figure has been stated to stand at Rs.10.04 crores.

19. The petitioner further avers that the remaining two executors have failed to resolve their differences and a stalemate continues to exist. It is further disclosed that a succession certificate has been duly issued by the Additional Civil Judge in respect of Schedule A properties. However, differences continue to exist with respect to the distribution of proceeds that may be obtained from a liquidation of the Schedule B properties.

20. It was the submission of the petitioner that a nominee merely retains the right to collect on behalf of all legal heirs and cannot in any case claim succession to properties to the exclusion of others. Mr. Ramachandran submitted that right from **Sarbati Devi v. Usha Devi**² the Supreme Court has consistently reiterated the aforesaid position and enunciated the status of a nominee to be merely that of a trustee who may hold monies in his/her hands for the benefit of all surviving legal heirs. Mr. Ramachandran referred to the following passages from the decision in **Sarbati Devi** rendered on this issue and which are extracted hereinbelow: -

“3. The only question which requires to be decided in this case is whether a nominee under Section 39 of the Act gets an absolute right to the amount due under a life insurance policy on the death of the assured. Section 39 of the Act reads:

“39. *Nomination by policy-holder.*—(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to

² (1984) 1 SCC 424

whom the money secured by the policy shall be paid in the event of his death:

Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement, or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life

is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section the said Section 6 shall be deemed not to apply or not to have applied to the policy.”

5. We shall now proceed to analyse the provisions of Section 39 of the Act. The said section provides that a holder of a policy of life insurance on his own life may when effecting the policy or at any time before the policy matures for payment nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. If the nominee is a minor, the policy-holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy-holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation or change is notified to the insurer if he makes the payment bona fide to the nominee already registered with him, the insurer gets a valid discharge. Such power of cancellation or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under Section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of Section 39 of the Act here. But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy-holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy-holder. If that is so, on the death of the policy-holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a ‘statutory testament’ in

para 16 of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36: ILR (1981) 2 Del 315]. If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary succession is not relaxed even where wills are registered.

8. We have carefully gone through the judgment of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36: ILR (1981) 2 Del 315]. In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. The Delhi High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law. The second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1)(kb) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment debtor shall be exempt from attachment by his creditors. The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. We find it difficult to treat a nominee as being equivalent to an heir or legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in

appreciating the two decisions of the Madras High Court in *Karuppa Gounder v. Palaniamma* [AIR 1963 Mad 245 at para 13: (1963) 1 MLJ 86: ILR (1963) Mad 434] and in *B.M. Mundkur v. Life Insurance Corporation of India* [AIR 1977 Mad 72: 47 Com Cas 19: (1977) 1 MLJ 59: ILR (1975) 3 Mad 336]. The relevant part of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36: ILR (1981) 2 Del 315] reads thus: (AIR p. 40, paras 10, 11)

“10. In *Karuppa Gounder v. Palaniamma* [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] , K had nominated his wife in the insurance policy. K died. It was held that in virtue of the nomination, the mother of K was not entitled to any portion of the insurance amount.

11. I am in respectful agreement with these views, because they accord with the law and reason. They are supported by Section 44(2) of the Act. It provides that the commission payable to an insurance agent shall after his death, continue to be payable to his heirs, but if the agent had nominated any person the commission shall be paid to the person so nominated. It cannot be contended that the nominee under Section 44 will receive the money not as owner but as an agent on behalf of someone else, vide *B.M. Mundkur v. Life Insurance Corporation* [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . Thus, the nominee excludes the legal heirs.”

12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in *Fauza Singh case* [AIR 1978 Del 276] and in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does

not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.”

21. Mr. Ramachandran had submitted that the law as declared in *Sarbati Devi* has been consistently followed and reiterated by the Supreme Court as well as our Court in numerous decisions. He invited the attention of the Court to the decision in **Shipra Sengupta v. Mridul Sengupta & Ors.**³ where the position was reiterated as under:-

14. In *Sarbati Devi* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] this Court has laid down that a mere nomination does not have the effect of conferring to the nominee any beneficial interest in the amount payable under the life insurance policy, on death of the insurer. The nomination only indicates the hand which is authorised to receive the amount on payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession.

15. The appellant also placed reliance on the judgment of this Court in *Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani* [(2000) 6 SCC 724] , wherein this Court held that: (SCC pp. 734-35, para 13)

“13. ... the law laid down by this Court in *Sarbati Devi* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] holds the field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those in whose favour the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.”

16. Learned counsel for the appellant also placed reliance on a Division Bench judgment of the Delhi High Court in *Ashok Chand*

³ (2009) 10 SCC 680

Aggarwala v. Delhi Admn. [(1998) 7 AD 639 (Del)] This case related to the Delhi Cooperative Societies Act. The High Court while following *Sarbati Devi case* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] held that it is well settled that mere nomination made in favour of a particular person does not have the effect of conferring on the nominee any beneficial interest in property after the death of the person concerned. The nomination indicates the hand which is authorised to receive the amount or manage the property. The property or the amount, as the case may be, can be claimed by the heirs of the deceased, in accordance with the law of succession governing them.

17. The controversy involved in the instant case is no longer *res integra*. The nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession. In terms of the factual foundation laid in the present case, the deceased died on 8-11-1990 leaving behind his mother and widow as his only heirs and legal representatives entitled to succeed. Therefore, on the day when the right of succession opened, the appellant, his widow became entitled to one-half of the amount of the general provident fund, the other half going to the mother and on her death, the other surviving son getting the same.

18. In view of the clear legal position, it is made abundantly clear that the amount under any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with the law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case the amounts so received are to be distributed according to the Hindu Succession Act, 1956.

22. The petitioner also relied upon the following passages from the decision of the Supreme Court in **Ram Chander Talwar & Anr. v. Devender Kumar Talwar & Ors.**⁴

3. Mr Swetank Shantanu, the counsel appearing for the appellants, strenuously argued that by virtue of sub-section (2) of Section 45-ZA, the nominee of the depositor, after the death of the depositor acquires all his/her rights to the express exclusion of all other persons and, therefore, the respondent cannot lay any claim to the money in the account or in regard to the articles that might be lying in the bank locker held by their deceased mother. The submission is quite fallacious and is based on a complete misconception of the provision of the Act.

⁴ (2010) 10 SCC 671

4. Sub-section (2) of Section 45-ZA, reads as follows:

“45-ZA. ***

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the *right to receive* the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, *in relation to such deposit* to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.”

5. Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor *so far as the depositor's account is concerned*. But it by no stretch of imagination makes the nominee *the owner of the money lying in the account*. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed.”

23. Mr. Mehta, learned senior counsel, who appeared for the first respondent had for the convenience of the Court placed on the record a chart setting out the present status with respect to the administration of the estate of the late Mr. Shankardass with reference to the various clauses of the Will. The aforesaid chart is reproduced hereinbelow: -

**“ADMINISTRATION OF THE ESTATE OF LATE MR. RKP
SHANKARDASS SENIOR ADVOCATE”**

SN	CLAUSE	PROPERTY/ ITEM	BENEFICIARY	PRESENT STATUS AND NEXT STEPS
1.	Clause 3	Property known as 'Bansuman' at	Ratna Kapur	Completed Devolved to Ratna

		Mussoorie		Kapur under Mrs. Shankardass' will and mutated in her name.
2.	Clause 5	Savings Account No. 52510356547 Chartered Bank	Deposits and balances Pending (covered by Succession of INR 1,20,60,413.72 to be donated to one or more of the charities in Clause 8A (vi) to (x)	Pending (Covered by Succession Certificate) Funds are to be received in the estate bank account opened pursuant to this Hon'ble Court's order dated 16.08.2022 and thereafter distributed by the executors. This is not in dispute. Distribution of bequests is a ministerial task and does not require any mediation by an administrator.
3.	Clause 6A	4 securities investments in a Canadian bank account, on either or survivor basis, with each of Uday Shaila / Raina / Shammit Kapur	Uday Shankardass, Shaila Shankardass, Raina Shankardass, Shammit Kapur for their respective investments.	Completed Payment of bequests was facilitated by Respondent No. 1 in April 2017. Receipts are on record.
4.	Clause 6B	Any balance in the above account	To be divided equally between Uday, Shaila, Raina, and Shammit.	Completed Payment of bequests was facilitated by Respondent No. 1 in April 2017. Receipts are on record.
5.	Clause 7	Natwest Account in London (held jointly with Arun Shankardass)	Ratna Kapur	Account was closed by the testator during his lifetime.

6.	Clause 8	Bequests from 3 bank accounts referred to as 'New Delhi bank accounts' by the testator (identified in Clause 4)		
7.	Clause 8A	INR 5,00,000.00	(i) Bar Association of India	Pending Funds are to be received in the estate bank account opened pursuant to this Hon'ble Court's order dated 16.08.2022 and thereafter distributed by the executors to various association charities identified. Distribution of bequests is a ministerial task and does not require any mediation by and administrator.
		INR 5,00,000.00	(ii) SCBA	
		INR 5,00,000.00	(iii) DHCBA	
		INR 5,00,000.00	(iv) Indian Society of International Law	
		INR 5,00,000.00	(v) Centre for Feminist Legal Research	
		INR 5,00,000.00	(vi) SOS	
		INR 5,00,000.00	(vii) Shruti	
		INR 5,00,000.00	(viii) Deeply	
		INR 5,00,000.00	(ix) Oxfam, to be used for girl child/legal literacy for women and/or animal welfare	
		INR 5,00,000.00	(x) Udayan Care	
		INR 50,00,000.00	TOTAL	
8.	Clause 8B	INR 3,00,000.00	Baldev Sharma	Pending Funds are to be received in the estate bank account opened pursuant to this Hon'ble Court's order dated 16.08.22 and thereafter distributed by executors. Distribution of bequests is a ministerial task and

				does not require any mediation by an administrator.
		INR 3,00,000.00	KL Kapur	Completed Paid by Respondent No. 1 from her own funds on 2 November 2019. Receipt is on record.
		INR 2,00,000.00	Darshan Singh	Completed Paid by Respondent No. 1 from her own funds on 1 November 2019. Receipt is on record.
		INR 1,50,000.00	Baisakh Singh, or his wife	Completed Paid by Respondent No. 1 from her own funds on 26 February 2020, during the pendency of the petition.
		INR 1,50,000.00	Shakti Charan Thapa, or his wife	Completed Paid by Respondent No. 1 from her own funds on 21 February 2020, during the pendency of the petition.
		INR 50,000.00	Ram Singh, at Bansuman, if living at the time of testator's death	Completed Paid by Respondent No. 1 from her own funds on 27 October 2019. Receipt is on record.
		INR 50,000.00	Smt. Banaspati, at Bansuman, if living at the time of testator's death	Completed Paid by Respondent No. 1 from her own funds on 28 October 2019. Receipt is on record.
		INR 12,00,000.00	TOTAL	

9.	Clause 8C	10,000 Canadian Dollars	Satya Khosla	Completed Paid by Respondent No. 1 in April 2019. Receipt is on record.
		10,000 Canadian Dollars	Raj Kapur	
10.	Clause 8D	INR 50,00,000, in addition to investments already made on either or survivor basis	Ratna Kapur	Pending Decision of this Hon'ble Court in the present petition on the interpretation of the will is to govern the bequests to Ratna and Naina Kapur in relation to the Nomination Funds. For the remaining bequests of specified amounts, funds are to be received in the estate bank account opened pursuant this Hon'ble Court's order dated 16.08.2022 and to be thereafter distributed by the executors.
		INR 50,00,000, in addition to investments already made on either or survivor basis	Naina Kapur	
		INR 50,00,000	Uday Shankardass	Distribution of bequests is a ministerial task and does not require any mediation by an administrator.
		INR 30,00,000	Shaila Shankardass	
		INR 30,00,000	Raina Shankardass	
		INR 30,00,000	Shammit Kapur	
		INR 2,40,00,000.00	TOTAL	
11.	Clause 9	DLF-Gurgaon, X-115 Regency Park-II 14, Barakhamba Road	Ratna Kapur If jointly held, then devolves the surviving co-owner.	Pending Beneficiaries are clearly identified and are not disputed between the executors. No mediation is

		Any other flat	If in the testator's sole name, then one half to Uday Shankardass and benefits of the other half to identified charities.	required.
12.	Clause 10	Crestview, Wildflower Country	Naina Kapur	Pending Beneficiaries are clearly identified and are not disputed between the executors. No mediation is required.
13.	Clause 11	Personal valuables.	Uday Shankardass and Shammit Kapur	Completed Delivered by Respondent No. 1 in April 2017. Receipt is on record.
14.	Clause 12B read with Clause 1	B-12, Maharani Bagh	25% of net sale proceeds to Ratna Kapur 25% of net sale proceeds to Handoo Trust 30% among Naina, Shaila, Raina and Uday 20% equally among 8A(vi)-(x)	Pending Admittedly, the decision regarding sale of the property vests with Ratna Kapur. Therefore, there is no dispute between the executors requiring mediation by an administrator.
15.	Clause 13A	Furniture/fittings /carpets/ paintings	Ratna Kapur. in consultation with Sarita Kapur	Completed
16.	Clause 13B	Residue, in cash or kind	15% each to Ratna, Naina, Shaila, Raina and Uday (total 75%)	Pending Decision of this Hon'ble Court in the present petition on the

			25% to charities in 8A (vi) to (x)	interpretation of the will is to govern the quantum of residue available for distribution between the beneficiaries identified. Process of payment has been outlined above and does not require mediation by an administrator.”
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24. Mr. Mehta submitted that consequent to disputes having arisen with respect to the interpretation to be accorded upon Clause 8D and parties having failed to arrive at a consensus, the first respondent had sought the legal opinion from a former Chief Justice of India and which lends credence to the interpretation which the first respondent seeks to place upon Clause 8D. In terms of the independent legal opinion which was obtained, it was contended that the designation of the first respondent as a nominee must be understood as the embodiment of the intent of the testator to confer an exclusive right upon her over the Schedule B securities. It was submitted that Clause 8D must be understood in the backdrop of the fact that the testator and his wife brought up the first respondent as their adopted daughter and that she is one of the primary beneficiaries under the Will. It was also contended that the first respondent was also named as the legal heir and executor in the Will drawn by the testator's wife. She is also stated to be a trustee in the Handoo Trust which had been created by the wife of the late Mr. Shankardass. The closeness of the relationship between the first respondent, the testator and his late wife and the bond of love and affection that existed was also sought to be

established from the fact that the former had performed the last rites of the late Mr. Shankardass and his wife.

25. According to Mr. Mehta, Clause 8D represents the intent of the testator to not only bequeath upon respondent no.1 the sum of Rs.50 lakhs but to additionally confer upon her the right to claim benefits from out of the securities mentioned in Schedule B. Mr. Mehta sought to emphasise the undisputed fact that no other beneficiary under the Will stands named as a nominee or a joint holder in respect of the investments linked to the New Delhi bank accounts. It was the submissions of learned senior counsel that in cases of ambiguity in the interpretation of a testamentary disposition, the primary obligation of the Court is to give full effect to the intent of the testator based upon a holistic reading of the Will and all its clauses. It was submitted that if the contention of the petitioner were to be accepted it would render the “either or survivor clause” as appearing in Clause 8D as surplusage and bereft of any meaning or intent.

26. It was submitted that a meaningful interpretation of Clause 8D together with the attendant facts, the closeness of the relationship that the first respondent shared with the testator and his wife, the fact that she had lived with them right from the time that she was fifteen years of age would lead one to the irresistible conclusion that the testator purported to confer exclusive rights upon the first respondent insofar as Schedule B properties are concerned.

27. It was also contended that at the time when the Will came to be executed in 2014, a learned Judge of the Bombay High Court in

Harsha Nitin Kokate vs. Saraswat Co-op. Bank Ltd. & Ors.⁵ had held that a nomination would vest exclusive rights upon the persons so named. According to Mr. Mehta, the aforesaid view continued to hold the field till the decision in *Harsha Nitin Kokate* came to be overruled by a Division Bench of the said High Court on 01 December 2016 and thus just a few months before the death of the late Mr. Shankardass. It was submitted that it was perhaps bearing in mind the principles enunciated in *Harsha Nitin Kokate* which would appear to have persuaded the testator to proceed on lines analogous thereto and frame Clause 8D accordingly. In *Harsha Nitin Kokate*, a learned Judge of the Bombay High Court had made the following pertinent observations: -

“8. It can be seen that since all the shares are held in Demat form with the Depository Participant and the portfolio of the holder may change each day. Hence one nomination is specifically required to be made as provided in the aforesaid legislation. The nomination would have the effect of vesting in the nominee complete title in the shares. He would be entitled to elect to be registered as a beneficial owner of the shares or he would have the right to transfer the shares. These are inter alia the rights of every shareholder of a listed Companies. These rights show that the vesting of the shares is upon the death of the shareholder provided only that the nomination is made as per the procedure set out by the Depository Participant. This procedure is the registration of the form of nomination constituting the nomination of the nominee with his photograph signed by the holder as well as the nominee and witnessed by at least 2 persons and registered with the Bank. The purpose and object of this section is clear. It is simplifies the procedure relating to the transmission of shares which is otherwise an intangible movable property. As the shares are now held in Dmat form and can be purchased and sold in the market by word of mouth or on the Internet, and no physical share certificates are issued by Companies, only one nomination for all the shares in all the companies need be made. That can be registered only with the Depository Participant who records all the share transactions of the holder of the shares who is mandatorily required to open a Dmat

⁵ 2010 SCC OnLine Bom 615

account with the Depository Participant. Hence the legislature has simplified and specified the procedure for vesting of shares by nomination made in the prescribed manner.

24. In the light of these judgments section 109A of the Companies Act is required to be interpreted with regard to the vesting of the shares of the holder of the shares in the nominee upon his death. The act sets out that the nomination has to be made during the life time of the holder as per procedure prescribed by law. If that procedure is followed, the nominee would become entitled to all the rights in the shares to the exclusion of all other persons. The nominee would be made beneficial owner thereof. Upon such nomination, therefore, all the rights incidental to ownership would follow. This would include the right to transfer the shares, pledge the shares or hold the shares. The specific statutory provision making the nominee entitled to all the rights in the shares excluding all other persons would show expressly the legislative intent. Once all other persons are excluded and only the nominee becomes entitled under the statutory provision to have all the rights in the shares none other can have it. Further section 9.11 of the Depositories Act 1996 makes the nominee's position superior to even a testamentary disposition. The non-obstante Clause in section 9.11.7 gives the nomination the effect of the Testamentary Disposition itself. Hence, any other disposition or nomination under any other law stands subject to the nomination made under the Depositories Act. Section 9.11.7 further shows that the last of the nominations would prevail. This shows the revocable nature of the nomination much like a Testamentary Disposition. A nomination can be cancelled by the holder and another nomination can be made. Such later nomination would be relied upon by the Depository Participant. That would be for conferring of all the rights in the shares to such last nominee.

25. A reading of section 109A of the Companies Act and 9.11 of the Depositories Act makes it abundantly clear that the intent of the nomination is to vest the property in the shares which includes the ownership rights thereunder in the nominee upon nomination validly made as per the procedure prescribed, as has been done in this case. These sections are completely different from section 39 of the Insurance Act set out (supra) which require a nomination merely for the payment of the amount under the Life Insurance Policy without confirming any ownership rights in the nominee or under section 30 of the Maharashtra Cooperative Societies Act which allows the Society to transfer the shares of the member which would be valid against any demand made by any other person upon the Society. Hence these provisions are made merely to give a valid discharge to the Insurance Company or the Co-operative Society without vesting the ownership rights in the Insurance Policy or the membership rights in the Society upon such

nominee. The express legislature intent under section 109A of the Companies Act and section 9.11 of the Depositories Act is clear.”

28. That decision however came to be overruled by a Division Bench of that High Court in **Shakti Yezdani & Anr. Vs. Jayanand Jayant Salgaonkar & Ors.**⁶ as would be evident from the following passages: -

“17. In these Appeals, we are concerned with the two provisions of the Companies Act which are Sections 109A and 109B which read thus:

“109A. NOMINATION OF SHARES.-

(1) Every holder of shares in, or holder of debentures of, a company may, at any time, nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.

(2) Where the shares in, or debentures of, a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in, or debentures of, the company, the nominee shall, on the death of the shareholder or holder of debentures of, the company or, as the case may be, on the death of the joint holders becomes entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of, the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the shares, or holder of debentures, to make the nomination to appoint, in the prescribed manner, any

⁶ 2016 SCC OnLine Bom 9834

person to become entitled to shares in, or debentures of, the company, in the event of his death, during the minority.]

109B. TRANSMISSION OF SHARES.-

(1) Any person who becomes a nominee by virtue of the provisions of section 109A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either -

- (a) to be registered himself as holder of the share or debenture, as the case may be; or
- (b) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debenture holder, as the case may be, could have made.

(2) If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, himself, as the case may be, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder, as the case may be.

(3) All the limitations, restrictions and provisions of this Act relating to the right to transfer and the registration of transfers of shares or debentures shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(4) A person, being a nominee, becoming entitled to a share or debenture by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share or debenture except that he shall not, before being registered a member in respect of his share or debenture, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of

the share or debenture, until the requirements of the notice have been complied with.]”

18. Apart from the provisions of the Companies Act, we are also concerned with the Bye-Law No. 9.11 framed in exercise of the powers under the Depositories Act, 1996 which reads thus:

“9.11. TRANSMISSION OF SECURITIES IN THE CASE OF NOMINATION:

9.11.1. In respect of every account, the Beneficial Owner(s) (“Nominating Person(s)”) may nominate any person (“Nominee”) to whom his securities shall vest in the event of his death in the manner prescribed under the Business Rules from time to time.

9.11.2. The securities held in such account shall automatically be transferred in the name of the Nominee, upon the death of the Nominating Person, or as the case may be, all the Nominating Persons subject to the other Bye Laws mentioned hereunder.

9.11.3 ...

9.11.4. Beneficial Owner(s) may substitute or cancel a nomination at any time. A valid nomination, substitution or cancellation of nomination shall be dated and duly registered with the Participant in accordance with the Business Rules prescribed therefore. The closure of the account by the Nominating Person(s) shall conclusively cancel the nomination.

9.11.5. A Nominee shall not be entitled to exercise any right conferred on Beneficial Owners under these Bye Laws, upon the death of the Nominating Person(s), unless the Nominee follows the procedure prescribed in the Business Rules for being registered as the Beneficial Owner of the securities of the Nominating Person(s) in the books of the Depository.

9.11.6. A nominee shall on the death of the Nominating Person(s) be entitled to elect himself to be registered as a Beneficial Owner by delivering a notice in writing to the Depository, along with the certified true copy of the death certificate issued by the competent authority as prescribed under the Business Rules. Subject to scrutiny of such election, the securities in the Account shall be transmitted to the account of the Nominee held with any depository.

9.11.7. Notwithstanding anything contained in any other disposition and/or nominations made by the Nominating Person(s) under any other law for the time being in force,

for the purposes of dealing with the securities lying to the credit of deceased Nominating Person(s) in any manner, the Depository shall rely upon the last nomination validly made prior to the demise of the Nominating Person(s). The Depository shall not be liable for any action taken in reliance upon and on the basis of nomination validly made by the Nominating Person(s).”

19. Firstly, we propose to deal with the decision of the learned Single Judge in *Kokate's case*. The said decision is rendered in a Notice of Motion arising out of a suit. The Plaintiff therein was the widow of one Nitin Kokate, who died on 5th July 2007. Her deceased husband held certain shares in D-mat Account with the Depository Participant Cell of the first Defendant in the suit. The husband of the Plaintiff had made a nomination in favour of the third Defendant. The third Defendant was the nephew of the deceased husband of the Plaintiff. The Plaintiff claimed a title in the said shares after the demise of her husband as the sole heir and legal representative under the law of succession. The third Defendant claimed ownership of the shares on the basis of the nomination made by the deceased husband of the Plaintiff. The learned Single Judge considered the provisions of Section 109A of the Companies Act and the Bye-Law No. 9.11 framed under the Depositories Act, 1996. Section 109A and the Bye-Law No. 9.11 are already quoted above. The learned Single Judge considered the decision of the Apex Court in the case of *Sarbati Devi* dealing with the nomination under Section 39 of the Insurance Act. The learned Single Judge also dealt with the nomination made in accordance with Section 30 of the Maharashtra Co-operative Societies Act, 1960. The learned Single Judge in *Kokate's case* observed that in case of the nominees under the aforesaid two Enactments, the nominee becomes merely a trustee of the estate of the deceased. It was held that Section 109A of the Companies Act stands on a separate footing. Thereafter, the learned Single Judge considered the meaning of the word “vests” and ultimately in Paragraphs 24 and 25 of the said decision, she held thus:

“24. In the light of these judgments Section 109A of the Companies Act is required to be interpreted with regard to the vesting of the shares of the holder of the shares in the nominee upon his death. The act sets out that the nomination has to be made during the life time of the holder as per procedure prescribed by law. If that procedure is followed, the nominee would become entitled to all the rights in the shares to the exclusion of all other persons. The nominee would be made beneficial owner thereof. Upon such nomination, therefore, all the rights incidental to ownership would

follow. This would include the right to transfer the shares, pledge the shares or hold the shares. The specific statutory provision making the nominee entitled to all the rights in the shares excluding all other persons would show expressly the legislative intent. Once all other persons are excluded and only the nominee becomes entitled under the statutory provision to have all the rights in the shares none other can have it. Further Section 9.11 of the Depositories Act 1996 makes the nominee's position superior to even a testamentary disposition. **The non-obstante Clause in Section 9.11.7 gives the nomination the effect of the Testamentary Disposition itself. Hence, any other disposition or nomination under any other law stands subject to the nomination made under the Depositories Act. Section 9.11.7 further shows that the last of the nominations would prevail.** This shows the revocable nature of the nomination much like a Testamentary Disposition. A nomination can be cancelled by the holder and another nomination can be made. Such later nomination would be relied upon by the Depository Participant. That would be for conferring of all the rights in the shares to such last nominee.

25. A reading of Section 109A of the Companies Act and 9.11 of the Depositories Act makes it abundantly clear that the intent of the nomination is to vest the property in the shares which includes the ownership rights thereunder in the nominee upon nomination validly made as per the procedure prescribed, as has been done in this case. These Sections are completely different from Section 39 of the Insurance Act set out (supra) which require a nomination merely for the payment of the amount under the Life Insurance Policy without confirming any ownership rights in the nominee or under Section 30 of the Maharashtra Cooperative Societies Act which allows the Society to transfer the shares of the member which would be valid against any demand made by any other person upon the Society. Hence these provisions are made merely to give a valid discharge to the Insurance Company or the Cooperative Society without vesting the ownership rights in the Insurance Policy or the membership rights in the Society upon such nominee. The express legislature intent under Section 109A of the Companies Act and Section 9.11 of the Depositories Act is clear.”

36. Section 109B of the Companies Act does not advance the case of the Appellants any further. Section 109B does not suggest that

on nomination being made by a deceased shareholder of a Company, his nominee becomes the owner of the shares to the exclusion of all other legal heirs.

42. The provisions relating to nominations under the various Enactments have been consistently interpreted by the Apex Court by holding that the nominee does not get absolute title to the property subject matter of the nomination. The reason is by its very nature, when a share holder or a deposit holder or an insurance policy holder or a member of a Co-operative Society makes a nomination during his life time, he does not transfer his interest in favour of the nominee. It is always held that the nomination does not override the law in relation to testamentary or intestate succession. The provisions regarding nomination are made with a view to ensure that the estate or the rights of the deceased subject matter of the nomination are protected till the legal representatives of the deceased take appropriate steps. None of the provisions of the aforesaid Statutes providing for nominations deal with the succession, testamentary or non-testamentary. As observed by the Apex Court, the legislative intention is not to provide a third kind of succession. In *Sarbati Devi*, the Apex Court held in paragraph 5 which reads thus:

“.....But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy-holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy-holder. If that is so, on the death of the policy-holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. **There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a ‘statutory testament’** in para 16 of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315]. If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. **It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take**

in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary succession is not relaxed even where wills are registered.”

43. The object of the provisions of the Companies Act is not to either provide a mode of succession or to deal with succession. The object of the Section 109A is to ensure that the deceased shareholder is represented by some one as the value of the shares is subject to market forces. Various advantages keep on accruing to shareholders. For example, allotment of Bonus shares. There are general meetings held of the Companies in which a shareholder is required to be represented. The provision is enacted to ensure that the commerce does not suffer due to delay on the part of the legal heirs in establishing their rights of succession and claiming the shares of a Company.

44. Considering the consistent view taken by the Apex Court while interpreting the provisions relating to nominations under various Statutes (including the view in the recent decision in the case of *Indrani Wahi*), there is no reason to make a departure from the consistent view. The provisions of the Companies Act including Sections 109A and 109B, in the light of the object of the said Enactment, do not warrant any such departure. The so called vesting under Section 109A does not create a third mode of succession. It is not intended to create a third mode of succession. The Companies Act has nothing to do with the law of succession. We have gone through every decision and material relied upon by the Appellants to which we have not made a specific reference in this Judgment. We hold that there was no reason to take a view which is contrary to the view taken in the long line of the decisions of the Apex Court on interpretation of provisions regarding nominations. Hence, the view taken in *Kokate's case* is not correct. We answer the first question in the negative and the third question in the affirmative. The second question is answered accordingly.”

The submission in essence was that the Court must refrain from interpreting Clause 8D in a manner which would render it wholly redundant and devoid of substance. It is the aforesaid submissions which fall for consideration.

29. Having noticed the submissions addressed, the Court firstly turns its gaze upon the Will executed by the late Mr. Shankardass. Significantly, the said bequest at various places makes categorical provisions with respect to the devolution of property on an absolute basis and to the exclusion of all others. This is evident from Clause 3 where the testator had provided that Bansuman would devolve upon the first respondent solely. Similarly in Clause 9 the testator conferred rights upon the flat at DLF, Gurgaon to be held by the first respondent as the “absolute owner” thereof. In Clause 10, the testator made a bequest in absolute terms in favour of his niece Naina in relation to the property situate in Crestview, Wildflower Country, Gurgaon by providing that his share in the flat shall stand bequeathed to his niece and who thus would become the exclusive owner thereof.

30. In the testamentary disposition which forms the subject matter of the instant petition, the late Mr. Shankardass also made provisions for the distribution of proceeds standing to the credit of joint accounts or which may have carried the stipulation of either or survivor. This is evident from Clause 6 when while dealing with the bank account in Canada, the testator had provided that although the account was held jointly with his nephew Uday Shankardass and his pre deceased brother’s wife Mrs. Nihar Shankardass, upon his demise the proceeds standing in that account were to be distributed as per Clause 6A and 6B. In Clause 7, the testator made provisions for the distribution of funds held in a bank account in the NatWest Bank, London. Though this account was also jointly held with his cousin Arun Shankardass and also carried the stipulation of either or survivor, the testator had provided that the balance standing in that account shall upon his

demise go to the first respondent. The testator has thus in unequivocal and unambiguous terms conferred exclusive ownership rights over various assets acquired by him in his lifetime. Even where accounts were held jointly and were subject to the prescription of “either or survivor”, he chose to make distributive orders in terms specifically provided in the Will. In fact, and as would be evident from the aforesaid recital of facts, the prescription of “either or survivor” which would otherwise and ordinarily have led to the surviving joint account holder being entitled to the proceeds thereof was specifically overridden with the testator making specific provisions for the distribution of such assets. The “either or survivor” stipulation was thus countermanded and rescinded wherever the testator so desired.

31. The Court then proceeds to consider the construct of Clause 8. The said provision firstly contemplates the creation of a corpus comprising of the cash and the investment portfolio held through the three “New Delhi Bank Accounts”. That corpus was thereafter to be utilised for the purposes of satisfying the bequests made in sub-clauses A, B, C and D thereof. It would also be pertinent to note that Schedules A and B have come to be prepared by the executors for effective management of the estate alone. The solitary distinction which exists between the two Schedules is of the latter comprising of those securities in which the first respondent stands named as the nominee. The testator originally and at least in terms of the Will had chosen not to make any such distinction at all. The Court thus comes to the irresistible conclusion that the entire cash balance and the investment portfolio held through the three New Delhi Bank Accounts constituted one common corpus or pool of funds which was to be

utilised for the purposes of the endowments specified in sub-clauses A, B, C and D.

32. The Court finds itself unable to proceed on the assumption that the testator was oblivious of the fact that the first respondent stood designated as a nominee only in some of the investments held through those bank accounts. He could have, as any man of ordinary prudence would be expected to act, if intending to confer exclusive rights in respect of Schedule B investments either taken steps to transpose the first respondent as a joint holder or made a specific and unambiguous endowment in her favour. While he chose not to express his intentions in unequivocal terms, the Court is called upon to consider whether Clause 8D is liable to be understood as an embodiment of such an intent and in the manner as suggested by the first respondent.

33. As this Court reads Clause 8D, it finds that while the testator had clearly stipulated that a sum of Rs. 50 lakhs each would be paid to his nieces Ratna and Naina, it was further clarified that the said endowment would be in addition to the investments already made with them on either or survivor basis. The usage of the said phrase is essentially a manifestation of the testator's intent for the bequest of Rs.50,00,000/- each not being whittled down or reduced by virtue of any other investments that may have been made jointly with them. It becomes pertinent to note that the bequest in terms of sub- clause D was sought to be sustained with the aid of the three New Delhi Bank Accounts none of which were held jointly on "either or survivor basis" by the testator and any another individual. As per Clause 8D, the money standing to the credit of those three New Delhi Bank

Accounts as well as the investments forming part of the portfolio managed by the three banks was to be cumulatively utilized in order to distribute the sums specified in sub-clauses A, B, C, and D amongst the nieces and nephews of the testator and other beneficiaries specified therein. The sums bequeathed to the nephews and the nieces was to be collected for distribution by utilizing the amount standing in those accounts or by transfer of mutual funds and investments. All of the above stipulations thus clearly negate the assertion of the first respondent that the Schedule B properties were intended to devolve upon her exclusively.

34. The Court thus comes to conclude that the Schedule A and Schedule B properties and insofar as they related to cash existing in the bank accounts as well as the investments made by the testator were to be utilized collectively in order to satisfy the bequest comprised in Clause 8. Undisputedly, there were no investments which had been made by the late Mr. Shankardass along with the first respondent on “either or survivor” terms. It is also admitted to the first respondent that none of the securities which find mention in Schedule B were held by her or in her name jointly along with the late Mr. Shankardass.

35. Clause 8D uses the expression “....already made with them”. On a plain reading thereof, it would thus appear to refer to investments already made by the late Mr. Shankardass along with his nieces Ratna and Naina. Clause 8D thus appears to secure to the two nieces a sum of Rs.50 lakhs each and additionally preserve their right upon investments made by the late Mr. Shankardass with them on either or survivor basis. The designation of the first respondent as the

nominee in the Schedule B properties cannot be understood or viewed as an investment made jointly. The Court bears in mind the undisputed fact that the Will had been drawn by an individual who was an eminent lawyer and thus well versed with the laws and the position of a nominee as understood in a legal sense. The Court also bears in consideration that the judgment rendered by the learned Judge of the Bombay High Court in *Harsha Nitin Kokate* struck a solitary discordant note with respect to an otherwise well settled legal position of a nominee. That judgment itself had been rendered in the context of Section 109A of the Companies Act 1956. In *Harsha Nitin Kokate* the learned Judge of the Bombay High Court appears to have been swayed to take the view that the nominee would be entitled to claim sole and exclusive rights over the securities by virtue of the usage of the word “vest” in that provision. However, and as rightly contended by Mr. Ramachandran, not only was that decision ultimately overruled by a Division Bench of that High Court, it clearly propounded a principle which was contrary to the position of a nominee as has been understood and explained by the Supreme Court right from 1984 in *Sarbatı Devi* and the consistent line struck by precedents rendered thereafter and noticed above. The Court thus finds itself unable to even consider that the testator being a person well versed in the laws would have been oblivious to the well settled legal position. A nominee, as has been held in a string of decisions noticed hereinabove, has never been recognized as being entitled to secure a right or interest in securities or over money standing in a bank account to the exclusion of all others. The usage of the expression “either or survivor” could have been possibly deployed to provision for the

contingency where accounts and investment instructions were proposed to be amended or even where future investments were planned. That alone appears to be the plausible intent of the terms of the endowment.

36. The Court thus comes to conclude that the second respondent could not have claimed a right over the Schedule B securities to the exclusion of all others. Notwithstanding the above, the Court finds no justification for the revocation of the authority of the testators. The conduct of the first respondent would clearly not fall within the ambit of Section 301 of the Act at least on the allegations that have been levelled. In the considered opinion of this Court, mere differences, discord or disagreement between executors would not by themselves constitute a justifiable ground for the revocation of the authority of an executor. Courts would tread cautiously in invoking the powers conferred by that provision except in cases of grave misconduct or malfeasance. The Court finds that while the executors in the present case may have disagreed or failed to concur upon the meaning to be ascribed to Clause 8D, the same would not warrant the removal of the first respondent.

37. In view of the aforesaid, the Court finds that the first respondent would not be entitled to claim the Schedule B properties to the exclusion of others. The first respondent shall consequently render a full account of all monies derived from the said properties. The two executors would be consequently obliged to draw up an account which would factor in all monies received by the first respondent from those assets and at the same time make adequate provisions for any moneys

expended by the said respondent from her personal account for the purposes of administering the estate of the deceased and giving effect to the terms of the Will. The investments comprised in Schedule B shall form part of the common pool for the purposes of meeting the endowments made under Clause 8. The balance, if any, shall fall within the ambit of Clause 13B and be distributed in terms of the wish of the testator as expressed therein.

38. While parting it may only be observed that Section 301 of the Act empowers the Court to suspend, remove or discharge an executor. The Court finds no justification to invoke or wield that power since the impasse which has led to the filing of the present petition rested principally on a disagreement between the two remaining executors on the interpretation to be ascribed to Clause 8D. The disagreement which came to the fore does not constitute a sufficient ground to remove or discharge the named executors. This more so in light of the close relationship and association of the two executors with the late Mr. Shankardass.

39. The Court hopes and trusts that both the petitioner as well as the first respondent shall rise above and bury all their differences remembering the trust that was reposed in them by the testator, work in harmony fulfilling the last wishes of the late Mr. Shankardass and thus giving his soul everlasting peace.

YASHWANT VARMA, J.

APRIL 17, 2023

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