IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE

Present:
The Hon'ble Justice Madhuresh Prasad
And
The Hon'ble Justice Supratim Bhattacharya

F.A.T. 357 of 2023
With
IA NO: CAN 1 of 2023

Smt. Rinki Sardar (nee Biswas) and another
Versus
Smt. Sandhya Sardar

For the Appellant : Mr. Saibalendu Bhowmik,
Mr. Biplab Guha
Mr. Subrata Bhatacharya
Mr. Rajsekhar Basu

For the Respondent: Mr. Md. Zeeshanuz Zaman

Heard On : 23.08.2024
Judgement Delivered On : 22.11.2024

Supratim Bhattacharya, J.:

1. This instant appeal has been preferred by the appellant/opposite party against the respondent/petitioner, being aggrieved by and dissatisfied with the order dated 28.06.2023 passed by the Ld. District Delegate at Baruipur, South-24-Parganas in Misc Case No. 31 of 2018.

2. Through the impugned order the Ld. Trial Court has allowed *ex parte* the prayer for granting succession certificate to the mother of the policy holder since deceased.

3. The appellants herein being the wife and minor son of the policy holder since deceased, were the opposite parties before the Ld. District Delegate and the respondent herein was the petitioner who is the mother of the policy holder since deceased.

4. <u>Facts of the instant *lis*</u>

One Bappaditya Sardar son of Sanjoy Sardar of village Arunachal Gorkhara P.O. & P.S. – Sonarpur, District: South-24-Parganas was the policy holder in respect of five Postal Life Insurance policies bearing the Nos. WB-137640-CS, WB-261942-CS, WB-261946-CS, WB-273806-CS and WB-AEA-184409-CS. The said Bappaditya Sardar expired on 24.03.2018 leaving behind his mother Sandhya Sardar , his wife Rinki Sardar nee Biswas and his minor son Rudrajit Sardar as his legal heirs. The said policy holder expired without executing any Will in respect of his estate.

The mother namely Sandhya Sardar prayed for grant of succession certificate to the extent of 1/3rd share in respect of the properties, assets and credits specified in schedule A to F authorising her to realise and collect the same with interest in respect of the estate of her son.

Ultimately the Ld. District Delegate Baruipur allowed the prayer of the petitioner *ex parte* as regards to the granting of succession certificate.

5. The Ld. District Delegate passed the following order:

"Accordingly, it is

<u>Ordered</u>

That the prayer for granting succession certificate is allowed ex parte without any order as to costs. Petitioner namely Sandhya Sardar is hereby authorised to realize and collect debts , interest and effects of deceased Bappaditya Sardar, Specifically mentioned in the schedule of the application as per law of inheritance applicable, if any.

Let a succession certificate be issued in favour of the petitioner within two moths from passing of this order. ...."

The wife and the minor son of the deceased have preferred the instant First Miscellaneous appeal against the said order.

6. The Ld. Counsel Mr. Mr. Saibalendu Bhowmik Being assisted by Mr. Biplab Guha, Mr. Subrata Bhatacharya and Mr. Rajsekhar Basu representing the appellants has submitted the following:

i) That the impugned order has been passed not in accordance with law.

ii) He has further submitted that the Ld. District Delegate ought not to have allowed the prayer of granting succession certificate only in favour of the mother of the deceased when the wife and a son being the legal heirs of the deceased are present.

iii) He has further submitted that the succession certificate ought to have been granted in favour of all the three legal heirs that is the mother, wife and the minor son of the policy holder, who are the legal heirs as because the policy holder has expired intestate.

iv) He has further submitted that in such circumstance the estate of the deceased is to be allotted as per the Hindu Succession Act.

v) He has further submitted that a nominee is not a beneficiary as such the mother is not entitled to receive the entire benefit accruing out of the estate left by her son since deceased.

Banking upon the aforesaid facts and circumstances the Ld. Counsel has prayed for setting aside the impugned order passed by the Ld. District Delegate, Baruipur.

7. The Ld. Counsel Mr. Md. Zeeshanuz Zaman representing the respondent has submitted the following:

i) That the Ld. District Delegate has passed the impugned order granting succession certificate in favour of the mother in accordance with law.

ii) He has further submitted that there is no need for interference in respect of the impugned order passed by the Ld. District Delegate Baruipur

Banking upon the aforementioned facts and circumstances the Ld. Counsel has prayed for dismissing the instant First Miscellaneous appeal and thereby affirming the order of the Ld. District Delegate.

8. So the point for consideration is as to whether the order passed by the Ld. District Delegate, Baruipur is in accordance with law or not.

In this regard the said impugned order is placed once again wherein the Ld. District Delegate has allowed the granting of the succession certificate *ex parte.* The petitioner herein namely Sandhya Sardar has been authorised to realise and collect debts, interest and effects of deceased Bappaditya Sardar and has also mentioned that the grant of succession certificate be as per law of inheritance, applicable, if any.

9. To have a holistic discussion, law laid down in the **Insurance Act, 1938** and the **Government Savings Certificates Act, 1959** are to be taken into consideration.

Section 38 and Section 39 of the **Insurance Act, 1938** states as follows:

> *"38. **Assignment and transfer of insurance policies**. --(1) A transfer or assignment of a policy of insurance, wholly or in part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons thereof, the antecedents of the assignee and the terms on which the assignment is made.*
>
> *(2) An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section (1), where it has sufficient reason to believe that such transfer or assignment is not bona fide or is not in the interest of the policyholder or in public interest or is for the purpose of trading of insurance policy.*

(3) The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policyholder not later than thirty days from the date of the policyholder giving notice of such transfer or assignment.

(4) Any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of thirty days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Authority.

(5) Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such *notice shall be delivered only at the place where the policy is being serviced.*

(6) The date on which the notice referred to in sub-section (5) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (5) are delivered:

Provided that if any dispute as to priority of payment arises as between assignees, the dispute shall be referred to the Authority.

(7) Upon the receipt of the notice referred to in sub-section (5), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be specified by the regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the

insurer that he has duly received the notice to which such acknowledgement relates.

(8) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (5), recognise the transferee or assignee named in the notice as the absolute transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

Explanation.-- Except where the endorsement referred to in sub-section (1) expressly indicates that the assignment or transfer is conditional in terms of sub-section (10) hereunder, every assignment or transfer shall be deemed to be an absolute assignment or transfer and the assignee or transferee, as the case may be, shall be deemed to be the absolute assignee or transferee respectively.

(9) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of

the Insurance Laws (Amendment) Act, 2015 (5 of 2015) shall not be affected by the provisions of this section.

(10) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon the condition that--

(a) the proceeds under the policy shall become payable to the policyholder or the nominee or nominees in the event of either the assignee or transferee predeceasing the insured; or

(b) the insured surviving the term of the policy, shall be valid:

Provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.

(11) In the case of the partial assignment or transfer of a policy of insurance under sub-section (1), the liability of the insurer shall be limited to the amount secured by partial assignment or transfer and such policyholder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

39. Nomination by policyholder. --(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 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 policyholder to appoint any person in the manner laid down by the insurer, 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 policyholder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may

charge such fee as may be specified by regulations 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:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, shall not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the *policyholder on repayment of loan other than on a security of policy to the insurer.*

(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 policyholder 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) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee

or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015 (5 of 2015).

(11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(12) 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 (3 of 1874), applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2015 (5 of 2015), 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."

Section 38 of the said Act lays down the law as regards to assignment and transfer of insurance policies while Section 39 of the said Act states as regards to the issue of nomination by the policy holder in respect of the policies.

While Sections 6, 7, 8 and 9 of the **Government Savings Certificates Act, 1959** lays down as follows:

"6. ***Nomination by holders of savings certificates****.—(1) Notwithstanding anything contained in any law for the time being in force, or in any disposition, testamentary or otherwise in respect of any savings certificate, where a nomination made in the prescribed manner purports to confer on any person the right to receive payment of the sum for the time being due on the savings certificate on the death of the holder thereof and before the maturity of the certificate, or before the certificate having reached maturity has been discharged, the nominee shall, on the death of the holder of the savings certificate, become entitled to the*

savings certificate and to be paid the sum due thereon to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(2) Any nomination referred to in sub-section (1) shall become void if the nominee predeceases, or where there are two or more nominees all the nominees predecease, the holder of the savings certificate making the nomination.

(3) Where the nominee is a minor, it shall be lawful for the holder of the savings certificate making the nomination to appoint in the prescribed manner any person to receive the sum due thereon in the event of his death during the minority of the nominee.

(4) A transfer of a savings certificate made in the prescribed manner shall automatically cancel a nomination previously made:

Provided that where a savings certificate is held by or on behalf of any person as a pledgee or by way of security for any purpose, such holding shall not have the effect of cancelling a nomination but the right of the nominee shall be subject to the right of the person so holding it.

*7. **Payment on death of holder**.—(1) If the holder of a savings certificate dies and there is in force at the time of his death a nomination in favour of any person, payment of the sum due thereon shall be made to the nominee.*

(2) Where the nominee is a minor, payment of the sum due thereon shall be made—

(a) in any case where a person has been appointed to receive it under sub-section (3) of Section 6, to that person, and

(b) where there is no such person, to any guardian of the property of the minor appointed by a competent court, or

where no such guardian has been so appointed, to either parent of the minor, or where neither parent is alive, to any other guardian of the minor.

(3) Where the sum due on a savings certificate is payable to two or more nominees, and either or any of them dies, the sum shall be paid to the surviving nominee or nominees.

(4) If a person dies and is at the time of his death the holder of a savings certificate and there is no nomination in force at the time of his death and probate of his will or letters of administration of his estate or a succession certificate granted under the Indian Succession Act, 1925 (39 of 1925), is not within three months of the death of the holder produced to the prescribed authority, then, if the sum due on the savings certificate does not exceed such limit as may be prescribed, the prescribed authority may pay the same to any person appearing to it to be entitled to receive the sum or to administer the estate of the deceased.

(5) Nothing contained in this section shall be deemed to require any person to receive payment of the sum due on a savings certificate before it has reached maturity or otherwise than in accordance with the terms of the savings certificate.

*8. **Payment to be a full discharge**.—(1) Any payment made in accordance with the foregoing provisions of this Act to a minor or to his parent or guardian or to a nominee or to any other person shall be a full discharge from all further liability in respect of the sum so paid.*

(2) Nothing in sub-section (1) shall be deemed to preclude any executor or administrator or other representative of a deceased holder of a savings certificate from recovering from the person receiving the same under Section 7 the

> *amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.*
>
> *(3) Any creditor or claimant against the estate of a holder of a savings certificate may recover his debt or claim out of the sum paid under this Act to any person and remaining in his hands un-administered, in the same manner and to the same extent as if the latter had obtained letters of administration to the estate of the deceased.*
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> *9. **Security for due administration**.—The prescribed authority may take such security as it thinks necessary from any person to whom any money is paid under sub-section (4) of Section 7 for the due administration of the money so paid and may assign the said security to any person interested in such administration."*

Section 6 of the Government Savings Certificates Act, 1959 lays down the law as regards to nomination by holders of savings certificates. Section 7 and Section 8 of the 1959 Act deals elaborately as regards to the issue of payment in case of death of the holder while Section 9 of the 1959 Act lays down issue of security for due administration of the money.

10. From the aforementioned acts of 1938 and 1959 it is crystal clear that a nominee is nothing more than a *custodia legis*. From the aforementioned sections it also transpires that a nominee is handed over the property of the deceased to have and hold on behalf of the legal heirs until and unless the exact share of the legal heirs is decided.

11. In this regard this Court refers to the judgment passed by the Hon'ble Apex Court in the case between Vishin N. Khanchandani and another Vs. Vidya Lachmandas Khanchandani and another reported in (2000) 6 SCC 724. In Paragraph No. 12 and 13 the Hon'ble Apex Court has lucidly laid down the provisions of law as regards to payment received and distribution of the money in respect of insurance policies and savings certificates.

Paragraphs No. 12 and 13 are laid down as follows:

> *"12. The submission made on behalf of the appellants has no substance in view of sub-section (2) of Section 8 and the Statement of Objects and Reasons necessitating the passing of the Act. Sub-section (1) of Section 8 provides that if any payment is made in accordance with the provisions of the Act to a nominee, the same shall be a full discharge from all further liabilities in respect of the sum so paid. Section 7 of the Act provides that after the death of the holder of the savings certificates, payment of the sum shall be made to the nominee, if any, and sub-section (1) of Section 8 declares that such payment shall be a full discharge from all further liabilities in respect of the sum so paid. However,* ***sub-section (2) of Section 8 specifies that the payment made to the nominee under sub-section (1) shall not preclude any executor or administrator or the legal representative of the deceased holder of a savings certificate from recovering from the person receiving the same under Section 7****; the amount remaining in the nominee's hand after deducting the amount of all debts or other demands lawfully paid or discharged by him in the due*

course of administration. ***In other words though the nominee of the National Savings Certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succession applicable in the case****, however, subject to the exception of deductions mentioned in the sub-section. In the Statement of Objects and Reasons of the Act it is stated:*

"The Post Office National Savings Certificates Ordinance, 1944 (42 of 1944), issued under Section 72 of the Ninth Schedule to the Government of India Act, 1935, as originally enacted and continued in force by virtue of the provisions of the India and Burma (Emergency Provisions) Act, 1940 (3 and 4 Geo. 6, Ch. 33) regulates the sale and discharge of National Savings Certificates issued through the post office. Suggestions have been made from time to time that as the production of legal proof of succession involves considerable delay and expense, the holders of savings certificates may be allowed the right to nominate one or more persons to receive the amounts due in respect of such certificates in the event of their death without the production of succession certificate or other proof of title. In seeking to amend that Ordinance for the above purpose, opportunity is taken to replace it by an Act of Parliament.

13. In the light of what has been noticed hereinabove, it is apparent that though the language and phraseology of Section 6 of the Act is different from the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding

> *avoiding delay and expense in making the payment of the amount of the National Savings Certificates, to the nominee of the holder, which has been considered to be beneficial both for the holder as also for the post office.* ***Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law****, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi case [(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."*

12. From the aforementioned laws and the authorities it is apparent that a nominee does not have any beneficial interest in the amount payable under the life insurance policy on the death of the assured. On the contrary nomination only indicates the hand which is authorised to receive the amount and on the payment of which the insurer gets a valid discharge of its liability under the policy and the amount can be claimed by the heirs of the assured in accordance with the law of succession governing them.

In this aspect this Court lays down the judgment passed by the Hon'ble Apex Court in the case between Smt. Sarbati Devi and another vs. Smt. Usha Devi published in AIR 1984 SC 346. In Paragraph 12 of the said judgment the Hon'ble Apex Court has been pleased to lay down the following:

> *"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."*

13. In this instant litigation the policy holder has expired leaving behind his mother, widow and a child, who are the legal heirs. It is the admitted case of the petitioner/respondent that she is entitled only to $1/3^{rd}$ share, as such all three are entitled to $1/3^{rd}$ share each of the estate of the deceased.

14. In the instant case the Ld. Trial Judge has granted the succession certificate in favour of Sandhya Sardar the mother of the deceased and authorised to realise and collect debts, interests and effects left by the deceased, as per law of inheritance applicable.

15. In the present case we find that the claim of the petitioner is confined to a Succession Certificate in respect of $1/3^{rd}$ share. We, therefore, are of the opinion that there was no occasion for the Court to direct issuance of a Succession Certificate in favour of the petitioner to realize and collect debts interest and effects left by the deceased without specifying the extent of $1/3^{rd}$ share as a whole.

16. Considering the discussion made above and the prayer made in the petition praying for the grant of succession certificate, the impugned order is modified to the extent that Sandhya Sardar, the mother of the deceased is authorised to realise and collect $1/3^{rd}$ share of the assets, interests, and effects in respect of the properties of the deceased namely Bappaditya Sardar.

17. Thus the instant appeal being **F.A.T. 357 of 2023** with **IA NO: CAN 1 of 2023** stands **allowed.**

18. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

19. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Madhuresh Prasad, J.) **(Supratim Bhattacharya, J.)**