IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

CS 191 of 2012

Jyotirmoy Pal Chaudhuri

Versus

Citi Bank N.A. & Anr.

Mr. Utpal Bose, Sr. Adv.
Ms. Hasnuhana Chakraborty
Mr. Subhransu Ganguly
... For the plaintiff.

Mr. Arif Ali
Mr. Probhat Kumar Srivastava
Ms. Ankita Singh
... For the defendant no. 1.

Mr. Aniruddha Mitra
Mr. Dhilon Sengupta
Ms. Manasi Bhattacharjee
Mr. Anirban Ghosh
... For the defendant no. 2.

Hearing Concluded On : 12.04.2024

Judgment on : 25.04.2024

Krishna Rao, J.:

1. The plaintiff has filed the present suit praying for a decree for a sum of Rs. 25,29,156.85/- against the defendants along with interest.

2. Sri Khagendra Pal Chaudhuri and Smt. Usha Pal Chaudhuri, both since deceased had six children in their wedlock, namely, Sri Jyotirmoy Pal Chaudhuri, the plaintiff herein, Smt. Ranu Talukdar, daughter (since deceased), Smt. Bani Roy (daughter), Sri Chinmoy Pal Chaudhuri (Son), Sri Mrinmoy Pal Chaudhuri, since deceased (son) and Smt. Sima Paul (daughter). Smt. Ranu Talukdar, one of the sister of the plaintiff died on 4th September, 1996 and one of the brother of the plaintiff, namely, Sri Mrinmoy Pal Chaudhuri died on 16th November, 2006. The wife of Sri Mrinmoy Pal Chaudhuri, since deceased being Smt. Shyamali Pal Chaudhuri also passed away on 26th July, 2008. Sri Mrinmoy Pal Chaudhuri and Shyamali Pal Chaudhuri (both deceased) had no issues.

3. Smt. Shyamali Pal Chaudhuri, since deceased died leaving behind several debts and securities. The plaintiff on behalf of his surviving brother and two surviving sisters as well as on his behalf had filed an application under Section 377 of the Indian Succession Act, 1925 before the Learned Court of District Delegate at Alipore for grant of Succession Certificate with respect to the debts and securities i.e. diverse savings bank accounts, fixed deposits accounts and others post office accounts of Smt. Shyamali Pal Chaudhuri (since deceased), wife of late Mrinmoy Pal Chaudhuri.

4. On 10th January, 2009, the plaintiff came across a letter issued by the defendant no. 1 to Smt. Shyamali Pal Chaudhuri, since deceased regarding operation of the bank account of Smt. Shyamali Pal Chaudhuri with the defendant no. 1. On receipt of the said letter, the plaintiff on 13th March, 2009, informed the defendant no. 1 that an application for grant of a Succession Certificate had been filed by the plaintiff with respect to the debts and securities of Smt. Shyamali Pal Chaudhuri and appropriate directions for operation of bank account would be given to the defendant no. 1 by the plaintiff only after grant of Succession Certificate. On 18th March, 2009, the defendant no. 1 called upon the plaintiff to provide death certificate, relinquishment deed etc. to the defendant no. 1 so that the account of the Shyamali Pal Chaudhuri being Account No. 5308184333 could be closed and the amounts will be transferred to the plaintiff.

5. The Learned Court of District Delegate at Alipore has granted Succession Certificate in favour of the plaintiff and in the said certificate, the bank account of Smt. Shyamali Pal Chaudhuri with the defendant no. 1 was one of the subject-matters. On receipt of the Succession Certificate, the plaintiff had visited the office of the defendant no. 1. The plaintiff was informed by the defendant no. 1 that the account of Smt. Shyamali Pal Chaudhuri, since deceased has been closed and the proceeds thereof had already been handed over to the defendant no. 2 sometime in the month of October, 2009, being the nominee of the said account. When the plaintiff came to know that the defendant no. 1 had released the amount in favour of the defendant no. 2, the plaintiff had submitted a letter dated 16th January, 2010 informing that the defendant no. 1 had illegally and wrongfully released the said amount in favour of the defendant no. 2 inspite of having knowledge that the plaintiff had filed an application before the appropriate court of law for grant of Succession Certificate and accordingly the plaintiff had filed the present suit.

6. On receipt of writ of summons, the defendant nos. 1 and 2 had appeared in the matter and filed their respective written statement. As per the case made out by the defendant no. 1 in the written statement that the plaintiff does not have any cause of action against the defendant no. 1 and proceeds of the bank accounts of Shyamali Pal Chaudhuri, since deceased had been handed over to the defendant no. 2 as nominee of the said account in terms of Section 45ZA of the Banking Regulation Act, 1949 and the Master Circular on Customer Service in banks issued by the Reserve Bank of India.

7. The defendant no. 2 in her written statement has made out a case that she is the own sister of Shyamali Pal Chaudhuri, since deceased and being the nominee in the bank account of Shyamali Pal Chaudhuri has received the proceeds of the bank account from the defendant no. 1. As per the case made out by the defendant no. 2 that from time to time, Shyamali Pal Chaudhuri had sold her properties inherited by her from her father, who was a medical practitioner having substantial practice in Chapra and the money received from the said properties had been invested in the said bank account with the defendant no. 2. It is further stated that the money lying in the bank account of Shyamali Pal Chaudhuri, since deceased with the defendant no. 1 were the proceeds of the sale of inherited properties of Shyamali Pal Chaudhuri, the plaintiff and other family members did not have any right in respect thereof and the defendant no. 2 is entitled to inherit the same in terms of Section 15 (2)(a) of the Hindu Succession Act, 1956. It is further stated that accordingly on 24th October, 2009, the defendant no. 1 had released a sum of Rs.25,29,156.85/- to the defendant no. 2.

8. On the basis of the pleadings of the parties, the following issues have been framed:

> ***"1.*** *Whether the plaintiff is entitled to the proceeds lying in the Savings Bank Account No. 5308184333 in the name of Smt. Shyamali Pal Chaudhuri, since deceased with Chowringee Branch of the Defendant No. 1 bank by virtue of and on the basis of the Succession Certificate granted by the learned 2 District Delegate at Alipore by the judgment and order dated December 21, 2009 ?*
>
> ***2.*** *Whether the Defendant No. 1 ought to have disbursed the amounts lying in the Savings Bank Account No. 5308184333 in the name of Smt. Shyamali Pal Chaudhuri, since deceased with Chowringee Branch of the Defendant No. 1 bank to the plaintiff and not to the Defendant No. 2 ?*
>
> ***3.*** *Whether the Defendant No. 2, as the nominee of Smt. Shyamali Pal Chaudhuri, since deceased and the account holder of Savings Bank*

Account No. 5308184333 with Chowringee Branch of the Defendant No. 1 bank is holding the money received by her from the Defendant No. 1 in trust for and on behalf of the plaintiff ?

***4.** Whether the Defendants No. 1 and 2 are jointly and/or severally liable to make payment of a sum of Rs.2529156.85 to the plaintiff ?*

***5.** Whether the plaintiff is entitled to the reliefs as claimed in the plaint and/or any other reliefs ?*

***6.** Whether the Defendant No. 1 acted illegally and wrongfully and in violation of the mandate and Guidelines of the Reserve Bank of India in releasing the proceeds of Savings Bank Account No. 5308184333 in the name of Smt. Shyamali Pal Chaudhuri, since deceased with Chowringee Branch of the Defendant No. 1 bank in favour of the Defendant No. 2, the 3 nominee despite having notice of the pendency of proceedings of Successively Certificate ?*

***7.** Is the present suit bad for non-joinder of necessary parties being all the heirs of the deceased account holder, namely, Shyamali Pal Chaudhuri ?*

***8.** Is there is any valid cause of action of the Plaintiff against the Defendant No. 1 ?*

***9.** Whether the properties or sale proceeds thereof lying to the credit of S.B. A/c. No. 5308184333 with Citi Bank, Chowringhee Branch, were inherited by Late Shyamali Paul Chowdhury from her father during her life time ?*

***10.** Is the plaintiff entitled to a decree for Rs.25,29,156.85 on the basis of the Succession Certificate issued by the Learned District Delegate at Alipore in Act 39 Case No.388 of 2008 (Succession) in the Goods of Late Shyamali Paul Chowdhury ?"*

9. The plaintiff has examined himself as P.W.1 and during his examination, altogether 13 documents were marked as Exhibit 1 to Exhibit 13, which are as follows :

Exhibit – 1: *A copy of a genealogy table.*

Exhibit – 2: *A copy of a letter written by the City Bank to Shayamali Pal Chaudhuri dated 10th January, 2009.*

Exhibit – 3: *A Copy of a letter dated 13th March, 2009, written by Jyotirmoy Pal Chaudhuri, wherein the plaintiff has informed the Citi Bank regarding the death of Shyamali Pal Chaudhuri.*

Exhibit – 4: *A copy of a letter dated 18th March, 2009, sent by the Citi Bank to Mr. Jyotirmoy Chaudhuri, informing him about the details which are required to be given to the bank in order to get the money which has been deposited by the sister-in-law and the mother of the plaintiff.*

Exhibit – 5 (with objection): *An amended copy of the application, being no. Act XXXIX Case No. 388 of 2008, filed before the Learned Court of the District Delegate, Alipore, for succession in respect of deposits.*

Exhibit – 6 (with objection): *An amended copy of the application made before the Court of District Delegate, Alipore, being no. ACT 39 Case No.388 of 2008, to amend the total amount to be Rs. 2 Crores 27 Lakhs, instead of Rs. 2 Crore 30 Lakhs, which was left by the sister-in-law of the plaintiff.*

Exhibit – 7: *A copy of a petition made by the defendant no.2, namely, Sonali Mazumder being Act XXXIX Case No. 388/08 (Dr. Jyotirmoy Paul Chowdhury -vs- Dipali Banerjee & Others).*

Exhibit – 8: *A copy of document submitted to the court by Sonali Mazumder, regarding the. Act XXXIX Case No. 388/08 (Dr. Jyotirmoy Paul Chowdhury -vs- Dipali Banerjee & Others).*

Exhibit – 9: *Certified copy of the order dated 21st December, 2009, of the Act XXXIX Case No.*

388/08 (Dr. Jyotirmoy Paul Chowdhury -vs- Dipali Banerjee & Others).

Exhibit – 10: *Actual Succession Certificate dated 23rd December, 2009, issued by the District Delegate at Alipore to the plaintiff.*

Exhibit – 11: *A copy of a letter dated 16th January, 2010, issued by the plaintiff to the Manager, Citi Bank.*

Exhibit – 12: *A copy of an order dated 5th August, 2019, passed in the Money Suit No.28948 of 2012 (Dr. Jyotirmoy Pal Choudhuri -vs- Mrs. Sonali Majumdar and Ors.).*

Exhibit – 13: *A website copy of the order dated 22nd July, 2022, passed by this Hon'ble Court in FAT No. 200 of 2019 (Mrs. Sonali Majumder -vs- Sri Jyotirmoy Pal Chaudhuri & Ors.).*

10. The defendant no. 2 has examined herself as D.W.1 and during her evidence, three (3) documents were marked as **Exhibits -A, B & C**, which are as follows:

Exhibit–A (Collectively) : *Account opening form.*

Exhibit–B (with objection): *Original copy of acknowledgement of nomination.*

Exhibit–C Collectively (with objection): *various receipts copy (original) in favour of Suchandra Mazumder, Adichunchanagiri Institute of Medical Sciences.*

11. The defendant no.1 has not adduced any evidence on its behalf.

12. After the death of Shyamali Pal Chaudhuri, the plaintiff has filed an application under Section 377 of the Indian Succession Act, 1925 for grant of Succession Certificate with respect to the Life Insurance

Corporation policies, savings bank accounts, fixed deposits in the State Bank of Mysore, Rash Behari Branch, two fixed deposits in the United Bank of India, Gariahat Branch, N.S.C's in post offices being Case No. 388 of 2008 before the Learned Court of District Delegate at Alipore. The application filed by the plaintiff before the Learned Court of District Delegate was duly contested by the defendant no. 2. In the said case, the defendant no. 2 raised objection regarding two fixed deposit accounts of Shyamali Pal Chaudhuri, since deceased with the United Bank of India, Gariahat Branch and on receipt of the said objection, the plaintiff had filed an application for amendment of the application for deleting two fixed deposit accounts of Shyamali Pal Chaudhuri with the United Bank of India, Gariahat Branch from the schedule of assets, accordingly, the said accounts were deleted and the application for Succession Certificate was duly amended. Before the District Delegate, the defendant no. 2 had also raised objection with respect to another savings bank account with Allahabad Bank, Rash Behari Branch, on the ground that the same was inherited from the side of the father by the deceased but the defendant no. 2 had failed to prove the same. The defendant no. 2 had never contended that the savings bank account No. 5308184333 was inherited property or was not the property of Shyamali Pal Chaudhuri, since deceased in the proceeding for grant of Succession Certificate. In the said proceeding, the defendant no. 2 did not contended that she had any right whatsoever in respect of the savings bank account No. 5308184333 with the defendant no. 1 or any objection was raised regarding grant of Succession Certificate of the said account in favour of the plaintiff. The Learned District Delegate at Alipore had granted Succession Certificate dated 21st December, 2009 in favour of the plaintiff in which the present account was also the subject-matter of the said Certificate.

13. In the present case, the defendant no. 2 tried to impress upon this Court that the defendant no. 2 is entitled to get the sum which was lying on the account of Shyamali Pal Chaudhuri, since deceased with the defendant no. 1 as per Section 15 (2)(a) of the Hindu Succession Act, 1956. The defendant no. 2 has not produced any document or brought any evidence on record to prove that the father of Shyamali Pal Chaudhuri, since deceased owned any properties or Shyamali Pal Chaudhuri, since deceased had sold the said properties and deposited the sale proceeds in the account maintained with the defendant no. 1. During the cross-examination, the defendant no. 2 admits that she has not submitted any document in support of her claim that the properties of her father had been sold and the proceeds deposited in the bank account. The defendant no. 2, during her examination, deposed that the flat no. 6, Jatin Bagchi Road had not been sold and was in her daughter's name. From the said evidence of the defendant no. 2 regarding the sale of properties of her father by Shyamali Pal Chaudhuri, since deceased and deposited the sale proceeds in the bank account has not been proved. The defendant no. 2 failed to prove that the amount lying in bank account of Shyamali Pal Chaudhuri, since deceased, was inherited by her from her father.

14. It is also not the case of the defendant no. 2 that the amount which was deposited by the deceased in the bank account with the defendant no.1 was inherited from her father. As per the case of the defendant no. 2 that the properties inherited by Shyamali Pal Chaudhuri, since deceased from her father were sold and then the sale proceeds were deposited in the account. Section 15 of the Hindu Succession Act, 1956 (Act of 1956) reads as follows:

> ***"15. General rules of succession in the case of female Hindus.—***
>
> *(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—*
>
> *(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*
>
> *(b) secondly, upon the heirs of the husband;*
>
> *(c) thirdly, upon the mother and father;*
>
> *(d)fourthly, upon the heirs of the father; and*
>
> *(e) lastly, upon the heirs of the mother.*
>
> *(2) Notwithstanding anything contained in sub-section (1),—*
>
> *(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and*

> *(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."*

In the case of ***Emana Veeraraghavamma –vs- Gudiseva Subbarao & Anr.*** reported in ***AIR 1976 AP 337***, the Hon'ble Division Bench of Andhra Pradesh High Court held that:

> ***"5.*** *The above section in effect provides a general rule of succession to the property of a female Hindu dying intestate and also two special rules of succession contained in clauses (a) and (b) of sub-section (2). Under clause (a) of sub-sec. (2), the property inherited by a female from her parents shall devolve upon the heirs of her father. In the absence of any son or daughter to her, while clause (b) thereof provides the mode of succession to the property inherited from her husband or from her father-in-law. These two clauses in Sub-Section (2) are in the nature of exceptions to the General rule of succession provided in sub-section (1). We are of course, concerned only with clause (a) of sub-section (2) in this case Now, while interpreting the said clause (a), it must be borne in mind that the female inheriting a property from her father or mother becomes the absolute owner of such property and that she can deal with it in such manner as she likes. If she alienates the property inherited by her. It cannot then be said, on her death that the property inherited by her, is still available for devolution. We are of the opinion that the expression "property inherited by a female Hindu from her father or mother" occurring in this sub-clause must be given a restricted meaning consistent with the absolute right of disposition of the female owner. The special rule of succession applies only in case the very 'property' inherited by a female from her father or mother is still available at the time of her death; otherwise; the rule does*

> *not apply. For example, if the identity of the property is changed or if the property is substantially altered or improved or if the property has been substituted, the said special rule can have no application. We are of the opinion that placing a broader meaning upon the said expression "property inherited by a female Hindu from her father or mother" would lead to much mischief not contemplated, by the Parliament. If the property were to be followed by the father's heirs irrespective of the change in the identity and/or character of the property it would give scope for unsavoury litigation and complications."*

In the present case also it is the specific case of the defendant no. 2 that Shyamali Pal Chaudhuri, since deceased sold the properties inherited from her father and then the sale proceeds were deposited in the said account, though the defendant no. 2 has not proved her case but assuming the defendant no. 2 proved her case then also the property inherited by Shyamali Pal Chaudhuri, since deceased from her father becomes her absolute property and the Special Rule have no application.

15. After came across a letter dated 10th January, 2009 of the defendant no.1, the plaintiff had informed the defendant no. 1 by a letter dated 13th March, 2009, that the plaintiff has initiated a case for grant of Succession Certificate with respect to the debts and securities of Shyamali Pal Chaudhuri, since deceased and appropriate directions for operation of the bank account would be provided to the defendant no.1 after issuance of Succession Certificate by the competent Court of law. On receipt of the said letter, the defendant no.1 by a letter dated 18th March, 2009, requested the plaintiff to provide death certificate, relinquishment deed etc. to the defendant no.1 so that the account of the deceased Shyamali Pal Chaudhuri could be closed and amounts can be transferred to the plaintiff. The plaintiff was granted Succession Certificate by the Learned District Delegate, at Alipore and on receipt of the same, the plaintiff had approached the defendant no.1 for release of the amount available in the account of the deceased Shyamali Pal Chaudhuri but the defendant no.1 informed the plaintiff that the defendant no.1 has released the amount in favour of the defendant no.2 as she is the nominee of the deceased Shyamali Pal Chaudhuri in her account.

16. Claim application filed by the defendant no. 2 with the defendant no.1 dated 7th October, 2009, is marked as **"Exhibit-14"** which reads as follows:

"CALM APPLICATION FOR RELEASE OF FUNDS IN THE ACCOUNT OF DECEASED CUSTOMER OF THE BANK

Date: 07/10/09.

Citibank N.A.
Kanak Building,
41, Chowringhee Road, Kalkata-700071.

Dear Sir/Madam,

Re.: Account(s)/Locker bearing nos. 5308184-333. In. INR

1. *I/~~We~~ regret to inform you that ~~Mr.~~/Ms. Syamali Palchoudhury ("Customer") who was maintaining the following account(s)/~~locker(s)~~ with your ________________ branch died on 26/07/2008.*

Nature of account (savings/~~current/ deposit~~ receipt/~~locker~~	Name of the joint account holder(s), if	Account number	Amount claimed	Due date for payment (in case	Name of the nominee, if any

etc.	any			of deposit receipts)	
Savings Account		5308184333			Sonali
		5308184333	2628802	85.-	Mazumder

2. *Late Mr./Ms. ____________ is survived by the following legal heirs at per the law of succession applicable to Late Mr./Ms. ______________ at the time of his death:*

Name	*Occupation*	*Relationship with the Customer*	*Age*	*Address*
N.A	*N.A*	*N.A*	*N.A*	*N.A*

3. *I/We confirm that legal representations in the form of succession certificate/letters of administration/probate with respect to the estate of Late Mr./Ms. ____________ have neither been obtained nor contemplated to be obtained from any court/authority,*

4. *I/~~We~~ hereby request you to pay the aggregate balance of a sum of Rs. 2628802.85 ________lying in the account(s) of Late ~~Mr.~~/Ms. Syamali Palchoudhury ____to me/~~us~~ by way of pay order/demand draft/crediting to the account no. ___________in the name of ~~Mr.~~/Ms. Sonali Mazumder without insisting on production of legal representation in the form of court order/probate/succession certificate/letters of administration with respect to the estate of Late Mr./Ms. Syamali Palchoudhury.*

5. *I/~~We~~ are related to Late ~~Mr.~~/Ms. Syamali Palchoudhury as ~~his~~/her Sister.*

6. *I/We hereby declare and affirm that I/We am/are entitled to receive the said amount/articles lying in the locker/safe custody account(s) of Late Mr./Ms. ______________ in my/our capacity of __________ of Late Mr./Ms. . _______________________and I/We hereby further confirm that all the representations made by me/us herein above are true and correct and that there is/are no other claimants to the said Account(s) of Late Mr. Ms. ______________.*

7. *I/We further confirm that I/~~We~~, the nominee(s) appointed by Late Mr./Ms. Syamali Palchoudhury, with respect to the Account(s), shall*

receive the amount/articles lying in the Account(s) as trustee(s) for the legal heirs of Late ~~Mr.~~/Ms. Syamali Pal Choudhury.

8. *I/We am/are claiming a sum of Rs. ______________/articles lying in the Locker/safe custody as the natural guardian/guardian appointed by the court vide order dated ________________ (copy enclosed) (strike out whichever is not applicable) of Ms./Mr. _______________, who is legally entitled to the same (to be filled where the claimant(s) is minor).*

9. *We are enclosing the following documents to facilitate the processing of our claim:*

   i. *Death certificate of the Customer.*
   ii. *Indemnity from all the legal heirs.*
   iii. *Driving Licence.*
   iv. *Voter Identify Card.*
   v.
   vi.

   (customer to provide the details of any and all other documents provided.).

Thanking you,

Yours sincerely,

Signature of the Claimant

Signature of the remaining legal heirs

Encl: .

1. *Xerox copy of Death Certificate of Late Syamali Palchoudhury.*
2. *Identify Card, Election commission of India.*
3. *Driving Licence. No:-WB-24-009140."*

In Clause 2 of the said claim form the details of the legal heirs as per law of succession is required to be provided but in the claim form it is mentioned as "N.A".

In Clause 3 of the claim form it is categorically mentioned about the Succession Certificate/Letters of Administration and Probate but the said clause remain unfilled.

Clause 6 of the form is also unfilled and the said clause is related to an under taking by the claimant.

Clause 8 of the form is also not filled by the defendant no.2.

As per clause 9 of the said form, death certificate of the Customer and indemnity bond from all the legal heirs are to be enclosed along with the details of any and all other documents but the defendant no.2 has not provided indemnity bond from all the legal heirs.

17. The defendant no. 1 without taking due care and caution knowing that the form submitted by the defendant no. 2 for release of the amount is not filled up properly and not enclosed the required documents but has released the said amount. During the cross-examination, answer to the question No. 90, the defendant no. 2 stated that the application form was filled up by her as per the instructions of the bank. In answer to the question No. 92, the defendant no. 2 stated that the application form was filled up by her husband and she does not know anything about the same. In answer to the question No. 93, the defendant no. 2 stated that she went to the bank with her husband and as per the instruction of the bank her husband filled up the form and she put the signature on the form.

18. The defendant no. 1 relied upon Section 45ZA of the Banking Regulation Act, 1945 read with Master Circular dated 1st July, 2009 and submitted that the defendant no. 1 bank had paid the money to the defendant no. 2 being the nominee of the deceased Shyamali Pal

Chaudhuri upon fulfilment of all formalities and discharged its obligation towards its customer as also the nominee.

19. Clause 20.1.1 of Master Circular 1st July, 2009, reads as follows:

> ***"20.1.1.*** *In the case of deposit accounts where the depositor had utilized the nomination facility and made a valid nomination or where the account was opened with the survivorship clause ("either or survivor", or "anyone or survivor", or "former or survivor" or "latter or survivor"), the payment of the balance in the deposit account to the survivor(s)/nominee of a deceased deposit account holder represents a valid discharge of the bank's liability provided:*
>
> *(a) The bank has exercised due care and caution in establishing the identity of the survivor(s)/ nominee and the fact of death of the account holder, through appropriate documentary evidence;*
>
> *(b) There is no order from the competent court restraining the bank from making the payment from the account of the decease; and*
>
> *(c) It has been made clear to the survivor(s)/ nominee that he would be receiving the payment from the bank as a trustee of the legal heirs of the deceased depositor, i.e., such payment to him shall not affect the right or claim which any person may have against the survivor(s)/ nominee to whom the payment is made."*

As per Clause 20.1.1(a) of the above Circular, the bank has to exercise due care and caution in establishing the identity of the survivor(s)/nominee and the fact of the death of the account holder, through appropriate documentary evidence. But in the present case, on careful examination of the claim form submitted by the defendant no. 2 for release of the debts of the deceased as nominee, the said claim form i.e. Exhibit-14 has not been verified by the bank with due care and caution as in the form Clauses 2, 3, 6, 8 and 9 have not been filled up properly and no details of the other legal heirs/successors of the deceased was provided no indemnity bond of the legal heirs have been submitted and inspite of the said discrepancies in the form, the bank has accepted and release the amount even both the defendants had the knowledge that a case is pending before the appropriate court of law for grant of Succession Certificate in which the particular account was also the subject-matter of the said case.

20. The defendant no. 1 as well as the defendant no. 2 were well aware about the pendency of the case for grant of Succession Certificate before the Learned District Delegate at Alipore as by a letter dated 13th March, 2009, the plaintiff had informed about the pendency of the case for grant of Succession Certificate to the defendant no. 1 and the defendant no. 2 was the party to the said case as the defendant no. 2 had participated in the said proceedings, but inspite of the same, the defendant no. 1 in connivance of the defendant no. 2 had released the amount without waiting the out come of the application filed by the plaintiff for grant of Succession Certificate.

21. The defendant no. 1 had not adduced any evidence in support of his case. Considering the above facts, the Court finds that there was connivance in between the defendant no. 1 and defendant no. 2 for releasing of the amount in favour of the defendant no. 1 in violation of the Master Circular as well as after knowing fully well that a case for grant of Succession Certificate is pending.

22. In the case of ***Ram Chander Talwar & Anr. –vs- Devender Kumar Talwar & Anr.*** reported in ***(2010) 10 SCC 671***, the Hon'ble Supreme Court held that :

> *"**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."*

The right to receive the money lying in the depositor's account was to be conferred on the nominee but the nominee would not become the owner of such deposit. The said deposit is a part of the deceased depositor's estate and is subject to the law of succession, that governs the depositor.

23. In the present case, this Court finds that the defendant no. 1 without taking due care and caution has released the amount of Rs. 25,29,156.85/- in favour of the defendant no. 2 and the defendant no. 2 having knowledge that the plaintiff had filed an application for grant of Succession Certificate in which the present savings account was also one of the subject-matter of the said case but the defendant no. 2 had suppressed the same and received the amount from the bank. The Learned Court of District Delegate at Alipore granted Succession Certificate in favour of the plaintiff, thus the defendant no.2 is liable to pay the amount of Rs. 25,29,156.85/- to the plaintiff along with interest @ 10% per annum from the month of November, 2009 till the realisation of the total amount.

24. The defendant no. 1 has not taken due care and caution and released the amount in favour of the defendant no. 2 knowing that the application form submitted by the defendant no. 2 was incomplete and had not submitted required documents due to which the plaintiff is compelled to file this suit for recovery of money and thus this Court imposed cost of Rs. 1,00,000/- upon the defendant no. 1.

25. The defendant no.2 is directed to pay the amount of Rs. 25,29,156.85/- along with interest @ 10% per annum from the month of November, 2009 till the payment of the total amount to the plaintiff. The defendant no. 1 directed to pay cost of Rs. 1,00,000/- to the plaintiff within four weeks from the date of receipt of this judgment failing which the amount shall carry interest at the rate of 10% per annum till the payment is made.

26. CS No. 191 of 2012 is thus **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)