

S.R.JOSHI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 2113 OF 2021

Smt. Mariambi H. Kapde
& Another

... Petitioners

Versus

The LIC of India
& Others

... Respondents

Mr. Sanjiv Sawant with Mr. Rohan Mahadik and Ms. Mekhala More i/b.
The Juris Partners, for the Petitioners.
Adv. Roop Basu i/b. The Law Point, for Respondent No.1.
Mr. Prashant G. Kayande, for the Respondents.

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**CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 14th MARCH, 2024**

P.C.

This Petition is filed, praying for the following reliefs:-

“(a) this Hon’ble Court be pleased to exercise the powers vested in it under Article 226 of the Constitution of India and to issue a Writ of Mandamus and/or a Writ in the nature of Mandamus, by directing the Respondent No.1 to cancel all the benefits of said Insurance Policy bearing Jeevan Saral Policy No. 884763993 dated 11.12.2013 and thereby further directing the Respondent No.1 to reimburse/ recollect and/or recover the amount of Rs.96,00,000/- (Rupees Ninety Six lakhs) from the Respondent No.2 lying in the Saving A/c. No. 0003501570256 and to disburse the same to the Petitioners as per Will dated 09.03.2020;

(b) this Hon’ble Court be pleased to exercise the powers vested in it under Article 226 of the Constitution of India and to issue a Writ of Mandamus and/or a Writ in the nature of Mandamus, by directing the Respondent No.2 to freeze the Saving A/c. No. 0003501570256 of Respondent No.3;

(c) Pending the hearing and final disposal of the writ petition, this Hon'ble Court be pleased to exercise the powers vested in it under Article 226 of the Constitution of India and to issue a Writ of Mandamus and/or a Writ in the nature of Mandamus, by directing the Respondent No.2 to freeze the Saving A/c. No. 0003501570256 of Respondent No.3.;

(d) Interim and ad-interim orders in terms of prayer clause (c) above granted to the Petitioner;

(e) Cost of the Petition be provided for to the Petitioner;

(f) For such further and other relief as the nature and circumstances of the case may require."

2 The Petitioner No.1 is the mother of Nadeem Kapde, who expired on 24th April, 2020 (for short "the deceased") Petitioner No.2 is the sister of the deceased.

3 The case of the Petitioner is that the deceased had taken a LIC Jeevan Saral Policy No.884763993, dated 11th December, 2013 from Respondent No.1- LIC. In such policy, Respondent No.3, Smt. Saher Nadeem Kapde, who is the wife of the deceased, was declared to be a nominee of the deceased. The deceased having expired on 24th April, 2020, Respondent No.3 had approached the LIC. The LIC, after proper verification of the documents and as per law, has granted the benefits of the Policy to Respondent No.3. The sum of money so granted by LIC is now Respondent No.3's bank account held with Respondent No.2-ICICI Bank. It is at this stage that the Petitioners approached this Court praying for reliefs as noted above on the ground that the deceased had left a Will dated 9th March, 2020.

4 The amounts having been already disbursed by the LIC in favour of Respondent No.3, it is not possible to consider the first prayer of the Petitioners that the LIC be directed by this Court, under Article 226 of the

Constitution of India, to take steps to recover the amount from Respondent No.3.

5 In so far as the second prayer is concerned, it seeks a Writ directing the ICICI Bank, who is Respondent No.2, to freeze the savings account of Respondent No.3 in which the proceeds of the said LIC Policy have been deposited. ICICI Bank is not a state within the meaning of Article 12 of the Constitution of India and, therefore, it is not possible to direct ICICI Bank to do so.

6 However, we see from the record that the Petitioner had moved to the present proceedings before the Division Bench of this Court, on 6th January, 2021, and ex-parte to Respondent No.3, an ad-interim order was passed by a Co-ordinate bench, wherein protection was granted by a direction to Respondent No.3 not to withdraw the amount received by Respondent No.3 from the LIC or any part thereof. By such order, there was also an injunction against ICICI Bank restraining it from permitting Respondent No.3 to withdraw the said amount, or any part thereof, from the bank account of Respondent No.3 with Respondent No.2 till the next date of hearing. It appears that such Order has continued to operate for more than three years now. On such backdrop, Respondent No.3 has moved the present proceedings on the ground that the Petitioners were sitting tight on the ex-parte ad-interim orders as Respondent No.3 who the widow of the deceased, is in dire need of money for her survival and she is required to withdraw money from the said account.

7 We have heard learned Counsel for the parties, we have perused the record. We are more than convinced that the prayers as made in the Petition are thoroughly misconceived as none of the prayers would deserve

any interference of this Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India.

8 From what is urged before us, we find that, on the basis of the alleged Will, which the Petitioners propound, the Petitioners have moved a Probate Petition before the learned District Court at Thane. In the said Petition, Respondent No.3 has filed a Caveat, thereby converting the Probate Petition into a Suit, which would be decided by the District Court. In such circumstances, in our opinion, the proper remedy for the Petitioner would be to move an application so as to obtain appropriate orders in the said proceedings which are pending before the learned District Court at Thane.

9 We, accordingly, dismiss the Petition, keeping open all contentions of the parties, to be urged in the said Suit.

10 In so far as the interim protection is concerned, to enable the Petitioner to file an appropriate application in the pending Suit, we continue the said ad-interim order for a period of three weeks only. However, continuation of the said order is no reflection on the merits of the contentions of the parties before the District Court in the pending Suit. The District Court shall consider the case in the proceedings before it on its own merits and in accordance with law.

11 Petition is dismissed, subject to the above observations. We refrain from imposing any cost on the Petitioners.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)