
(2013) 09 CAL CK 0098
In the Calcutta High Court
Case No : C.O. No. 494 of 2009

Anjuman Ara

APPELLANT

Vs

Sahida Khatoon

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 1 CHN 703

Hon'ble Judges : Anindita Roy Saraswati, J

Bench : Single Bench

Advocate : Suprobhat Bhattacharyya, for the Appellant;

Final Decision : Disposed Off

Judgement

Anindita Roy Saraswati, J.—The application under Article 227 of Constitution of India is directed against the order No. 76 dated 27/11/2008 passed by the Court of District Delegate, Alipore in connection with Act 39, Case No. 497 of 1993. By the said order the District Delegate allowed the application u/s 151 CPC for review and reconsideration of the order dated 9/4/2001 and succession certificate was granted in favour of both the parties according to their 50% shares each.

2. The fact of this case in short is that the opposite party/applicant Sahida Khatoon initiated the Act 39 case before the Court of District Delegate at Alipore, South 24 Parganas for grant of succession certificate in respect of the estate left by Sabrak Hussein since deceased. She claimed succession certificate in respect of 50% of the estate left by her husband.

3. The opposite party/present petitioner Anjuman Ara filed written objection and had contested that succession application. According to her averment Sabrak Hussein, nominated her to receive his outstanding service benefit in case of his death. However, though it was the case of the present petitioner Anjuman Ara that as per the provision of payment of Gratuity Act she being the nominee was entitled to get the entire provident fund money and gratuity but the District

Delegate after contested hearing on 9.4.2001 granted succession certificate in respect of 50% share of the total amount in favour of Sahida Khatoon and the rest 50% was allotted to the present petitioner Anjuman Ara.

4. However, the opposite party/present petitioner filed an application u/s 151 CPC before the District Delegate at Alipore for review and reconsideration of the order dated 9/4/2001. Which was opposed by the petitioner/Sahida Khatun by filing written objection and the District Delegate by its order dated 25/4/2003 rejected the said application with an observation that Anjuman Ara is the divorced wife of her husband and the Court by its order dated 9/4/2001 granted 50% share of her husband's estate in her favour. In the circumstances, according to him, there is no reason to review or reconsider the Court's previous order.

5. However, the present petitioner Anjuman Ara challenged the said order by filing a revisional application before this Court, which was disposed of on 6/3/2007. By the said order this Court remanded back the matter to the Court below with a direction upon the Court to consider the application filed by the present petitioner for reconsideration of the order No. 53 dated 9/4/2001 so far as the payment of amount against the gratuity is concerned.

6. However, after remand the Lower Court again considered the said application u/s. 151 C.P.C. for review and reconsideration on 27/11/2008 and came to the conclusion that petitioner Sahida Khatoon will get 50% share and opposite party Anjuman Ara will get 50% share of the amount lying in credit of deceased Sabrak Hussein on account of gratuity. Accordingly, the District Delegate granted succession certificate afresh in favour of both the parties.

7. Being aggrieved by the said order of the present petitioner Anjuman Ara initiated the present revisional application before this Court.

8. It is submitted by the learned Advocate for the petitioner Anjuman Ara that though the High Court by its previous order dated 6/3/2007 directed the Court below to consider the nominee form i.e. Exbt.-A. But the trial Court without considering the same came to his conclusion, which is obviously erroneous. According to him as per the "payment of gratuity Act, 1972" Anjuman Ara was appointed as nominee by Sabrak Hussein creating a right in the nominee to receive entire amount of her deceased husband against gratuity. He also relied a case between Smt. Usha Majumdar and Others Vs. Smt. Smriti Basu, in support of his contention. According to him as per the provision of both Payment of Gratuity Act as well as Employees' Provident Fund and Miscellaneous Provisions Act, 1952 the present petitioner being the sole nominee of her husband entitled to get the entire amount of gratuity including the amount of provident fund left by her husband. As such it was required to issue succession certificate accordingly.

9. Be that as it may it is admitted by the petitioner Anjuman Ara herself that she already received the payment of entire provident fund left by her husband

excluding the gratuity money. The District Delegate by its order-dated 27/11/2008 granted succession certificate in respect of 50% share of the gratuity amount to each of the petitioner and opposite party.

10. It appears to me this Court by its order dated 6.3.2007 sent the matter on remand with a direction to consider the nomination form submitted by diseased Sabrak Hussein and thereafter pass an order for payment of the amount against gratuity in concern.

11. As per the specific provision of Section 4 of the payment of Gratuity Act, 1972 in the case of death of the employee, gratuity payable to him shall be paid to his nominee, if no nomination has been made, to his heirs. It is the case of the petitioner Anjuman Ara that nomination form was produced before the trial Court to show that she was appointed as the sole nominee by her husband. But the Court below without considering that nomination form (Exbt.-A) declined to pass any order in favour of her.

12. In that circumstances the learned District Delegate ought to have pass an order on basis of the said nomination form as well as relying upon the provision of the statute but curious enough in spite of specific direction of the High Court the District Delegate in a very casual manner passed an order of getting 50% share of the gratuity amount by both of them ignoring the said nomination form as well as the specific provision of the statute.

13. It is true as per the provision of Payment of Gratuity Act the nominee has right to receive the money from the government or the holder of provident fund of gratuity amount. The nomination confers right on the nominee absolutely. But this does not make the nominee the owner of the fund. So long as nomination stands, the nominee is required only to prove that he/she was nominated by the subscribers and he/she can receive the amount without any conditions being imposed on him.

14. In that circumstances, it is mandatory to issue succession certificate in favour of the nominee and not in favour of any other person. In a proceeding u/s 370 of Indian Succession Act there is no scope to determine the share of the petitioners. If any party, who is not a nominee of the subscribers, has any right to get share of that amount, has every scope to claim the same in a separate proceeding but in any case she cannot get the same in connection with a succession proceeding. In the present case it was the mandatory task of District Delegate to consider the nomination form and being satisfied regarding the genuineness of the said form issue succession certificate only in favour of the nominee for the entire sum. As the said nomination form was not produced before me, I therefore sent the case back again on remand with a specific direction to issue succession certificate only on basis of the nomination form.

15. The District Delegate is further directed to disposed of this matter being a very old on within one month from the date of communication of the order on basis of the observation made in the body of this judgment.

16. The impugned order is hereby set aside and the CO. No. 494 of 2010 is accordingly disposed of. Urgent Xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.