(1987) 09 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9828 of 1987

Chandramma and Another APPELLANT

Vs

State Bank of Hyderabad and Another RESPONDENT

Date of Decision : 02-09-1987

Acts Referred:
Banking Regulation Act, 1949 — Section 45ZA, 45ZB

Citation : AIR 1988 AP 289 : (1990) 68 CompCas 554

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy, for the Appellant; K. Srinivasa Murthy, for the Respondent

Judgement

P.A. Choudary, J.

1. The two petitioners, Chandramma and Veeramma, are the widows of a late Adivappa, a resident of Sadasivapet, Medak District. The late Adivappa opened a special savings bank account No. 161 with the State Bank of Hyderabad, Sadasivapet. For some reasons, which is not necessary to go into, he had closed that account and transferred the balance to an ordinary savings account No. 2471. On the same date, he had nominated his two wives as his nominees. The bank accepted the deposit of about Rs. 10,00,000 and raised on objection to the nomination of the two wives. The said Adivappa subsequently died in the month of March, 1987 :

The petitioners herein who are the two nominees of Adivappa approached the State Bank of Hyderabad, Sadasivapet, for withdrawing the amount deposited by Adivappa with the bank. It appears from the communication sent by the bank in Lr. No. 203, dated May 30, 1987, that the manager of the bank refused the request of the petitioners to withdraw the deposited amount. The communication reads as follows :

"1. In the above account, Sri Adivappa has nominated two names, i.e., 1. Smt.

Chanaramma, and 2. Smt. Veeramma, to be payable jointly.

2. As per the provisions of the Banking Laws (Amendment) Act, 1983, nomination in respect of bank deposits,only one individual has to be nominated. Therefore, nominating two person in the above account of Sri. Adivappa is irregular and not enforceable as such bank is unable to settle the accounts in withdrawing the amount and you are requested to settle this by a prescribed legal representative."

The petitioner have, therefore, filed this writ petition for a direction to the respondents to permit them to withdrawn the amount deposited by late Adivappa.

2. It is not in dispute that the two petitioners herein are the persons nominated by the late Adivappa with respect to the amount of Rs. 10,00,000 which he had deposited with the bank. These two petitioners, the widows of Adivappa, would be entitled to withdraw the amount according to the nomination of Adivappa. The bank is, therefore, normally bound to pay the deposit amount to the petitioners. The recently enacted section 45ZA read with section 45ZA of the Banking Regulation Act puts the bank''s obligation to pay the deposited amount to the nominee perfectly clear. The refusal of the bank to pay the nominees should therefore, be considered as unlawful. However, the contention of the bank is that u/s 45ZA of the Banking Regulation Act, only one person can be nominated by the depositor. That section reads as follows :

"Nomination for payment of depositor''s money. - (1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate in the prescribed manner, one person to whom in the event of the health of the sole depositor or the death of all the depositors, the amount of deposit may be the banking company."

3. It is on the basis of the language of this section which speaks of nomination of one person by the depositor or depositors that the bank argues that the money should not be allowed to be withdrawn. In my opinion, this is mistaken contention of the bank and, in any event, such a contention is not open for the bank to be advanced. A sum of money as large as ten lakhs of rupees had been deposited by the late Adivappa with the bank. On the same date i.e., on February 4, 1987, when he was making the deposit,late Adivappa nominated the present two petitioners as his nominees. The bank, having accepted the deposit and having made use of that amount for all these years, cannot now be permitted to say that it will not allow withdrawal of the deposit by the petitioners who are admittedly the nominees of the depositor on the ground that the late Adivappa ought not to have nominated two persons instead of one person. Such a plea could have been taken only at the time of accepting the deposit. Having raised no such objection and having accepted the deposit, the bank must be deemed to have waived its objection to the making of two nominees. The above section does not relate to the legal validity of the two nominees. It is merely a direction to the bank to refuse to accept a deposit made with the names of two nominees.

It is not intended by the section that in case the bank disregards the said direction,the whole transaction of deposit together with the nomination should be treated illegal. The bank today cannot go back on the conditions subject to which the deposit has been made by Adivappa and accepted by it. I, therefore, hold that the action of the bank in refusing to pay the nominees of the depositor the deposited money is unjustified. Further, section 45ZA has nothing to do with the question of withdrawal of the deposit by the nominees. That section only deals with the question of deposited the money with the bank. At the time of withdrawal of deposited money, the question of validity of nomination does not arise. Having accepted two nominations, the bank cannot be permitted to take advantage of its own mistake.

4. For the above reasons, I direct the that a writ of mandamus should issue directing the second respondent to permit the two petitioners to withdraw the amount deposited by the late Adivappa in saving bank account No. 2471 of the State Bank of Hyderabad, Sadasivapet. As the bank is withholding unlawfully from May 30, 1987, the money belonging to the petitioners, I direct that the deposit amount shall carry interest of 12 percent per annum from that date.

5. The writ petition is allowed with costs. Adocate''s fees Rs. 500.

