(2008) 09 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 9636 of 2008

Divya Vasant Desai APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Banking Regulation Act, 1949 — Section 45ZA

Citation : (2008) 3 GLH 474 : (2009) 1 GLR 495

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : K.H. Kaji and Sudhir M. Mehta, for the Appellant; S.H. Almaula, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Almaula, learned Counsel for the respondent waives notice of Rule.

2. With the consent of learned advocates appearing for both the sides, the matter is finally heard.

3. The short facts of the case appears to be that late Shri Vasant J. Desai had opened a PPF A/c on 05.03.1989 with the respondent Bank and at the relevant point of time, Mrs. Kiranben, who was the wife of late Shri Vasant J.Desai was shown as the nominee. On 30.06.1989, on account of the death of Mrs. Kiranben, her name was deleted as the nominee. It further appears that simultaneously, on 30.06.1989, the name of three persons were included as the nominee, viz. Vanilaben Jayantilal Desai, Anjana Chandrakant Majmudar & Roshni Mohanprasad Majmudar. It appears that thereafter, late Shri Vasant J. Desai, on 13.09.1991, got married with Mrs.Divyaben and on the same day, her nomination is shown as entered in the passbook of PPF account. Shri Vasant J.Desai expired on 22.04.2008. The petitioner whose name appeared as the nominee in the PPF account, applied to the respondent Bank for release of the

amount to her as the nominee. However, the respondent Bank declined the same. It is under these circumstances, the petitioner has approached to this Court by preferring the present petition.

4. It deserves to be recorded that this Court on 08.09.2008, after hearing both the sides, had passed the following order:

1. Pursuant to the order passed by this Court, Mr. Vijay Bichewar, Chief Manager, is present.

2. Heard Mr. Kaji appearing with Mr. Mehta learned Counsel for the petitioner, and Mr. Almaula learned Counsel for the respondent bank.

3. Prima facie, it appears that as per the petitioner, she is wife of the deceased, and also the first degree legal heirs, and there is no other legal heirs then petitioner of deceased Vasant J Desai. It also prima facie appears that there is already entry in the passbook of PPF account for nomination of the petitioner on 13.9.1991, however, the contention of the respondent bank is that no record exist for such nomination in the bank, and therefore the respondent bank is not confirming the said nomination. The aforesaid is coupled with the circumstance that as per the respondent bank, even in respect of earlier nomination of three persons, which has been subsequently cancelled, the record does not exist with the bank. If such is tested on the ground of genuineness of the defence, it further appears that earlier nomination has been made in the passbook by the officer of the bank by putting initial and the same can be treated as final, unless any cogent material is brought to the notice of this Court, that the person had no authority in respect of other three persons, whose nomination was accepted and cancelled. There are already entries for such purpose, but merely because the bank is not having record, would not invalidate the nomination, if already in existence. Applying the same principles to the nomination made in favour of the petitioner, as such would prevail, even if the bank may not be in a position to trace the record.

4. Mr. Almaula learned Counsel for the respondent bank further submitted that as per the scheme of the PPF, form No. G is required to be submitted, by the person, seeking withdrawal of the amount, and details with the form No. G, inter alia includes succession certificate/letter of administration, which has not been submitted by the petitioner and therefore, bank could not release the amount, since the balance is exceeding Rs. 1 lac.

5. The examination of the said contention shows that form No. G is common for the nominees, as well for the legal heirs. If the nominees are to be held good for entitlement of the withdrawal of the amount, there would not be any requirement to produce the succession certificate/letter of administration. It is only in cases where the person is claiming withdrawal as legal heirs, who is not nominee, the requirement may be for production of the succession certificate/letter of administration. When the decease during life time has nominated the particular person for entitlement of the amount for operating account or withdrawal

thereof, such is to prevail in case, when the withdrawal is to take place, based on such nominations. Therefore, Clause III requiring production of such succession certificate/letter of administration, may not apply to the case of the petitioner, since the withdrawal is applied as nominee, and not as the legal heir, though the petitioner who is nominee is also legal heir.

6. It appears that with a view to allay any apprehension on the part of the bank on the ground of the genuineness of the nomination, if public advertisement is given in any Gujarati Newspaper having wide circulation in the area of Ahmedabad by the petitioner, same would be sufficient.

7. Considering the facts and circumstances of the present case, in the event there is no objection raised in response thereto, petitioner could be said as entitle for withdrawal of the amount. However, if any objection is raised, Court may pass appropriate orders examining genuineness of such objection or otherwise.

8. In any case the bank has to release the money and therefore, it would be just and proper to direct the bank to deposit the amount with this Court, which would enable this Court to pass effective final orders, in the event, petitioner succeeds in establishing the claim.

9. Hence, by interim direction it is ordered that the respondent bank shall deposit the amount with this Court with the accrued interest lying in the account, within a period of one week. The petitioner shall get advertisement published in the newspaper either in Gujarat Samachar/Divya Bhaskar/Sandesh declaring that the petitioner has claimed amount lying in the PPF account as the nominee of deceased Vasant J. Desai, and any person having objections, may submit objections in the proceedings of this petition on the next date or within ten days from the publication.

10. S.O. to 22.9.2008, for passing further orders and reporting compliance. To be listed on first board.

5. Mr. Kazi, learned Counsel appearing for the petitioner submitted that pursuant to the aforesaid order passed by this Court, the affidavit has been filed by the petitioner on 15.09.2008 stating that the public advertisement was given in ''Sandesh'' daily newspaper, copy whereof is also produced with the said affidavit. The aforesaid advertisement shows that the petitioner has claimed the right as the nominee in the PPF account of late Mr. Vasant J. Desai and, if any person has any objection to the claim of the said amount, he may file the objection in the present proceedings before this Court within 10 days from the publication of the notice. There is neither any objection received from any person nor as per the statement made by the learned Counsel for the petitioner, the petitioner or the respondent Bank has received any objection from any person.

6. In view of the above, it can be concluded that no one has any objection in the right claimed by the petitioner as nominee in the PPF account of late Shri Vasant

J. Desai.

7. As such, in the above referred order dated 08.09.2008, the objection raised on behalf of the Bank was considered to the effect that no succession certificate was produced by the petitioner for disbursement of the amount. It was observed by the Court that the question of production of succession certificate can arise in the case of a person who is claiming right as successor, but is other than the nominee in the Bank account. As in case of the petitioner, her name was already included as nominee, the question of production of succession certificate would not be required.

8. The aforesaid is coupled with the circumstance that as per Section 45ZA of the Banking Regulation Act, the right would flow in favour of the nominee on the death of the depositor and the nominee is entitled to get all the rights of the depositor, as the case may be, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner. It is true that the PPF is a special scheme of Government of India, but as observed earlier, the requirement for production of succession certificate would not be attracted in case of nominee and the provisions of the Banking Regulation Act can be taken as the guiding effect for examining the rights of the nominee to receive the amount in the Bank account under the PPF Scheme. If such is considered, it can be said that the nominee will be entitled to the amount.

9. Additional circumstance as referred to hereinabove in the present case is that in the public advertisement in the newspaper having circulation in Gujarat has been given, but none has objected to the status of the petitioner as nominee of late Shri Vasant J. Desai.

10. In view of the aforesaid, the petitioner in the capacity as the nominee in the PPF account of late Shri Vasant J. Desai would be entitled to receive the amount and so will be the obligation on the part of the respondent Bank to pay the amount to petitioner.

11. Therefore, it is hereby directed that the Bank will be required to pay the amount lying as credit balance in the PPF Account No. 10295620670 of late Shri Vasant J. Desai. As pursuant to the interim order passed by this Court, the respondent Bank has already deposited the total sum lying in the PPF Account of Rs. 20,30,916.49 ps with this Court, the petitioner in view of the earlier direction will be entitled to withdraw the same from this Court by A/c. Payee cheque.

12. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.