**(1966) 02 P&H CK 0015**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Liquidation Miscellaneous No. 41 of 1965

First National Bank Ltd. (In Liqn.) APPELLANT

Vs

Shri Devi Dayal RESPONDENT

**Date of Decision :** 25-02-1966

**Acts Referred:**

Banking Companies Act, 1949 — Section 45A , 45B
Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1, Order 21 Rule 12, Order 6 Rule 15
Succession Act, 1925 — Section 371, 372

**Citation :** AIR 1968 P&H 292 : (1969) 39 CompCas 638

**Hon'ble Judges :** Harbans Singh, J

**Bench :** Single Bench

**Advocate :** U.D. Gaur, for the Appellant; Rup Chand, for the Respondent

**Final Decision :** Allowed

## Judgement

Harbans Singh, J.—Devi Dayal respondent is a judgment-debtor of the First National Bank Ltd. (in liquidation) (hereinafter referred to AS the bank) to the extent of Rs. 1,50,000/- and so far nothing has been realised by the bank. The present application has been made by the liquidator alleging that one of the unmarried sons of the judgment-debtor Suresh Kumar Marwah, who was a depositor of the bank, suddenly died and a sum of Rs. 8,553.30 P. being I the dividend due to this son had since been transferred to the Companies Liquidation Account u/s 555(1)(a) of the Companies Act, 1956; that under the Hindu Succession Act Devi Dayal was the next heir being the father; that Devi Dayal did not apply himself for a succession certificate but his second son Surrinder Kumar Marwah made such an application and the same was granted by the Court after giving notice to the other near relatives and publishing a general citation and that in fact the amount, which is the subject-matter of the succession certificate, belongs to Devi Dayal as the next heir. It was, therefore, prayed that the record of the succession certificate case from Delhi may be summoned and it may be declared that the aforesaid succession certificate will be inoperative so far as the liquidator is concerned, and that, inasmuch an the amount belongs to the judgment-debtor, directions may be issued to the Secretary, Company law Board, to pay the aforesaid amount of dividend to the petitioner bank in part satisfaction of the bank''s claim against him. Notice was given both to Devi Dayal and Surrinder Kumar Marwah. Ad interim directions were issued to the Company Law Board not to pay the amount referred to in the petition. After considerable difficulty, both Devi Dayal and Surrinder Kumar Marwah were got served. They are represented by Ch. Roop Chand. They filed a joint written statement which, in fact, is not a proper written statement in the eye of law, because the same is neither verified as required nor is supported by an affidavit. It was not denied, however, that Suresh Kumar Marwah had died and that the succession certificate was obtained by Surrinder Kumar Marwah, Objection was taken to the jurisdiction of the Court to go into this matter and to declare the certificate as inoperative. The following issues were settledi--

(1) Has this Court jurisdiction to go into the matter raised by the petitioner?

(2) If so, is the succession certificate granted invalid and inoperative for the reasons given in the petition?

(3) Relief.

2. The parties agreed that no oral evidence was to be led. The records of the succession certificate case were in the Court and it was agreed that arguments shall be addressed on the basis of the material on that file. From the perusal of the application made in the Court at Delhi for obtaining the succession certificate, it is clear that besides Surinder Kumar Marwah applicant the only other near relations mentioned in paragraph 3 were Devi Dayal father and three sisters of the deceased. It is, however, clear that according to the Schedule to the Hindu Succession Act, after the relations mentioned in Class I of which none exists, in Class II rather is the most preferential heir and brothers and sisters come next. It is, therefore, clear that Devi Dayal was the next heir of the deceased Suresh Kumar Marwah and any amount which was payable to Suresh Kumar Marwah became payable to Devi Dayal as his successor. Now a succession certificate is not a final adjudication of the question as to who is the next heir and as such entitled to the estate of the deceased. Bakhshi Tek Chand J., in Mt. Charjo v. Dina Nath, AIR 1937 Lah 196 (2) at p. 198 observed as follows:--

"** that the legislature has laid down that the enquiry in such proceedings is to be summary, and the Court, without determining questions of law or tact, which seem to it to be too intricate and difficult for determination, should grant the certificate to the person who appears to have prima facie the best title thereto. In such cases the Court has not to determine definitely and finally as to who has the besi right to the estate. All that it is required to do is to hold a summary enquiry into the right to the certificate with a view, on the one hand, to facilitate the collection of debts. *** " and, on the other hand, to afford protection to the debtors by appointing a representative of the deceased and authorising him to give a valid discharge for the debt. The grant of a certificate to a person does not give him an absolute right to the debt nor does it bar a regular suit for adjustment of the claims of the heirs inter se ***"

Thus, it is obvious that the grant of sue cession certificate merely clothes the holder of the succession certificate with an authority to realise the debts of the deceased and to (five valid discharge. He has, however to dispose of the amount so realised in accordance with the rights of the persons who are entitled in it. The succession certificate therefore, in no way prevents the liquidator to come to this Court to say that his debt may be got realised by obtaining the payment from the Secretary Company Law Board, of the amount which in fact, belongs to its judgment-debtor Devi Dayal notwithstanding the fact that the succession certificate for realising the same has been granted to some other person. The aforesaid successsion certificate will therefore, obviously be inoperative and will not stand in the way of this Court to seize the amount and utilise it in satisfiaction of the amount due to the bank.

3. The sole question, therefore, is whether this Court has jurisdiction to go into the question whether Devi Dayal is the next heir to the disputed amount which belonged to his son. For that, the learned counsel for the liquidator relied on the provisions of Sections 15-A and 15-B of the Banking Companies Act. The relevant portion of these sections provides as under--

"45-A. The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the *** the CPC * ** or any other law for the time being in force.

45-B. The High Court shall *** have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up *** or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises *** before or after the date of the order for the winding up of the banking company or before or after the commencement of the Banking Companies ''Amendment) Act, 1953''

This Section 45-B was obviously inserted for the expeditious disposal of (he winding up of a banking company and to enable the liquidator to proceed with all proceedings in one Court, namely, the High Court, and thus to avoid recourse to multiplicity of actions and Courts. I have, therefore, no doubt in my mind that this Court has, jurisdiction to go into the question as to whether Devi Dayal succeeded to the amount referred to and that the amount belonged to him. Nothing has been urged to the contrary by the learned counsel for the respondent.

4. For the reasons given above therefore, I accept this petition and order, as prayed, that directions be issued to the Secretary. Company Law Board. Reserve Bank Building. New Delhi, to pay the amount of dividend in deposit with the Board in respect of the deposit of Suresh Kumar Marwah in this bank, to the

 

liquidator in part satisfaction of the bank''s claim against Devi Daval the next heir of the deceased There will be no order us to costs.