courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 02/09/2026

(2008) 04 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

NAGPUR NAGARIK SAHAKARI BANK LTD — APPELLANT

Vs

RAGINI JIVAN RAUT — RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Citation : 2008 3 CPJ 319

Hon'ble Judges : M.N.Ahmed , S.G.Nagarale J.

Advocate : H.I.Sheikh , S.V.Narale

Judgement

1. HEARD Advocate Mr. S. V. Narale for appellant -Nagpur Nagarik Sahakari Bank Ltd. (for short said Bank) and Mr. H. I. Sheikh for respondent - Smt. Ragini Jivan Raut in extenso. Perused the impugned order dated 26/3/2007 passed by Addl. District Consumer Forum, Nagpur in C. C. No. 184/2006, directing the appellant bank to pay Rs. 20,000. 00 as compensation for mental torture and agony and cost of Rs. 1,000. 00 to the respondent.

2. INITIALLY the dispute relates to disbursement of the amount of Rs. 4,44,432. 47, standing in Saving Account and 12 Fixed Deposits of one Mr. Mahadeo Narayan Malode in the said Bank. It is not in dispute that Mr. Mahadeo died on 20/11/2001. It is also not in dispute that Mahadeo''s son Mr. Krishnarao Malode was the nominee in the said account. After Mahadeo''s death the dispute over disbursement of the said amount arose between legal heirs of Mahadeo. It is also not in dispute that Mahadeo left only two legal heirs - namely Krishnarao Malode - son and Smt. Ragini J. Raut-daughter.

Smt. Ragini raised the objection vide her letter dated 31/11/2001 with the appellant bank, stating that she is also a legal heir of deceased Mahadeo, so she is also entitled to her share in the said amount deposited in the bank. On this objection, the appellant bank issued registered letter dated 8/2/2002 to nominee Krishnarao, informing the objection of Ragini and advised him to produce succession certificate from competent Court, so as to facilitate the bank to disburse the said amount. Copy of this letter was also addressed to objector - Ragini.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nagpur-nagarik-sahakari-bank-ltd-...

3. LATER on, the bank again informed to the Advocate of Krishnarao vide its letter dated 26. 3. 2002 that Ragini has raised the objection for disbursement of the said amount and the bank is not in position to disburse the amount to Krishnarao in absence of succession certificate as asked for. Then appellant bank vide its letter dated 20/1/2003 directed Ragini to produce succession certificate by 10/2/2003 and in case she fails to do so the amount would be disbursed to the nominee brother Krishnarao.

4. THEREAFTER, Ragini filed succession case bearing No. 36/03 in the Court of Civil Judge Sr. Division, Nagpur on 25. 2. 2003. The case came to be decided on 6. 1. 2006 and succession certificate was issued in favour of Ragini, determining her half share in the securities amount of deceased Mahadeo N. Malode. Meanwhile, on 22. 2. 2003 appellant bank disbursed the said amount to nominee brother-Krishnarao, who passed the receipt of having received the said amount from the appellant bank and stating therein that if any dispute arises in respect of the said amount in future, he would bear the cost eventually caused, which may be incurred in that matter to the bank. Likewise, nominee Krishnarao also issued a Letter of Indemnity in favour of the appellant bank to that effect and also filed affidavit and taking the entire liability on himself in case of any dispute about the said amount.

5. NOW the question that arises for our determination is whether the bank was negligent in disbursing the amount to nominee Krishnarao, when the objection was raised by his sister Ragini and when the bank itself directed Ragini and Krishnarao to produce succession certificate in this matter.

6. THE above data of the correspondence clearly shows that one Mahadeo had kept the amount in Fixed Deposit as well as in Saving Account bearing No. 4460. It is also not in dispute that Mahadeo had named his son Krishnarao as a nominee. It is also not in dispute that before the disbursement of the said amount to Krishnarao, sister Ragini raised the objection for disbursement of the said amount as a legal heir and appellant bank had directed Ragini to produce succession certificate in this matter.

Mr Narale, learned Advocate on behalf of appellant, relying on Section 45 (ZA) (2) of Banking Regulation Act, 1949 (for short Banking Act), contended that the bank is perfectly within its jurisdiction to disburse the amount to the nominee as per abovesaid section. He further pointed out that as per Sub-section (4) of 45 (ZA) of Banking Act, the payment made by the bank to the nominee, constitute a full discharge of liability of the appellant bank. He specifically relied on the proviso 45 (ZA) of Banking Act, which reads as under: "provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section. "

7. MR Narale further contended that as per the above proviso, right of the parties is saved and Ragini is at liberty to contest her claim before the competent Court against her nominee brother Krishnarao, who admittedly received the deposit

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nagpur-nagarik-sahakari-bank-ltd-…

amount from the appellant bank. It is settled by Hon''ble Bombay High Court in the case of P. V. Karande v/s. Sharda Karande, 2000 (1) Mh. LJ 632 that : "nominee cannot exclude other LRs to the estate of deceased. " in another case of V. L. Khanchandani and Anr. v/s. Vishnu N. Khanchandani and Anr. , 1993 (3) Mh. LJ 120, our Hon''ble Bombay High Court has held that: "nomination cannot create any beneficial interest in the nominee. Nominee is entitled to receive the amount as trustee only. "

8. THE question here in the instant case is when the bank had already directed the parties to submit succession certificate from the competent Court without exercising its power under Sec. 45 (ZA) of Banking Act, where bank is entitled to take resort to the said provision of Banking Act to correct the anomaly committed by the bank. We have no option but, to find that Bank is not entitled to take the shelter of Sec. 45 (ZA) of Banking Act in the instant case, especially when it had directed the parties to produce the succession certificate. When the Bank had directed the parties to produce certificate, it had thought it appropriate not to exercise its discretion, given to the bank, of disbursement of amount to nominee Krishnarao under Section 45 (ZA) of Banking Act. Once this step is taken by the bank, this bank cannot be allowed to rectify its mistake, which might have been noticed by them and bank cannot certainly be allowed to rectify its default by taking a shelter of Sec. 45 (ZA) of Banking Act. It is well-known principle of law that party cannot be allowed to approbate and reprobate at the same time, once the appellant bank has taken one stand, it ought to have stick-up to the said stand. Here in this case Ragini had already instituted succession case before the Court of Civil Judge, Sr. Divn. , Nagpur and therefore, appellant bank ought to have waited for succession certificate to be produced either by Ragini or by Krishnarao. Moreover, undue hest as has been shown by the appellant bank in its letter dated 20/1/2003, is also not justified from the record and speaks of change of mind of the appellant bank in this matter. In view of the facts and circumstances from the record, we think that the conclusion drawn by the Forum that there was a deficiency on the part of appellant bank in disbursement of amount to nominee Krishnarao, needs no interference in tnis appeal. However, amount of compensation of Rs. 20,000. 00 and cost of Rs. 1,000. 00 awarded to the bank appears to be heavy and it needs to be reduced to Rs. 2,000. 00 as compensation and Rs. 500 as cost.

9. ACCORDINGLY, appeal is disposed of in limine with above modifications in the final order of Addl. District Forum, Nagpur. Parties to bear their own cost. Copies of this order be supplied to the parties free of cost. Appeal disposed of.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nagpur-nagarik-sahakari-bank-ltd-…