

(1990) 11 CAL CK 0029
In the Calcutta High Court

Rama Chakravarty

APPELLANT

Vs

Manager, Punjab National Bank and others

RESPONDENT

Date of Decision : 07-11-1990

Acts Referred:

Banking Regulation Act, 1949 — Section 45ZA, 45ZA(2), 45ZC, 45ZE, 45ZE(3)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10(2)
Succession Act, 1925 — Section 370, 370(2)

Citation : AIR 1991 Cal 128 : (1991) 1 CALLT 324 : (1991) 1 CHN 75 : (1991) 71 CompCas 397 : 95 CWN 798

Hon'ble Judges : A.M. Bhattacharjee, J

Bench : Single Bench

Advocate : Mr. Asoke Chakraborty, for the Appellant; Mr. A. Kundu, for the Respondent

Judgement

1. The petitioner is the duly constituted nominee in respect of a Safety Locker in the Durgapur Branch of the Punjab National Bank, which was hired by her deceased husband, but the Bank has decided to deny to the petitioner any access to that Locker unless she produces a succession certificate in support of her right. I have no doubt that the Bank has gone entirely wrong in doing so.

2. It is true that the law in India is, by and large, against any interference with the ordinary course of intestate succession, save and except by a valid testamentary disposition strictly in accordance with the law governing testamentary disposition. We have got to, as pointed by the Supreme Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, bear in mind the anxious care that our law takes in the matter of execution and proof of testamentary instruments which have the effect of diverting the estate of the deceased or any part thereof from the ordinary course of intestate succession. If any post-mortem course of disposition of property does not satisfy the strict and rigorous requirements of the rules governing testamentary succession, it would stand outweighed and overthrown by the general law of intestate succession, unless a statute rules otherwise. A nominee, therefore, notwithstanding a valid

nomination in his favour by the last holder in respect of any property, would not acquire any right, title or interest in the property itself, to the exclusion of the heirs on intestacy, unless the law governing such nomination clearly vests the same in the nominee.

3. Section 39 of the Insurance Act, 1938, no doubt provides that on the death of the assured, the amount secured "shall be payable" to the nominee, if he survives the assured. But the view of this court, as would appear from the decisions in *Ramballav Dhandhaniah Vs. Gangadhar Nathmal*, and in *Life Insurance Corporation of India Vs. United Bank of India Ltd. and Another*, as well as of various other High Courts, has all along been that a nomination u/s 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable, but only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge. This view has now been upheld by the Supreme Court in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, .

4. But as already indicated, the relevant statute providing for the nomination may also provide that the amount or the properties, in respect of which nomination has been made, shall also vest in the nominee. As has been held by a Division Bench of this Court in *Keshab Lal Rudra and Another Vs. Ivarani Rudra*, construing the relevant provisions of the Provident Funds Act, 1925 and the Contributory Provident Fund (Bengal) Rules, a nomination thereunder conferred on the nominee not only absolute right to receive the money but also an absolute interest in the money itself.

5. A rather recent Division Bench decision of this Court in *Smt. Usha Majumdar and Others Vs. Smt. Smriti Basu*, has had to consider a similar question with reference to the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and of the Scheme framed thereunder. The Division Bench has referred to the Supreme Court decision in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, and the earlier Division Bench decision of this Court in *Keshab Lal v. Ivarani* (supra) and has, if I may say with respect, rightly highlighted the difference between the provisions of the Employees' Provident Fund Act and the Scheme thereunder which fell for its consideration and of the provisions of Section 39 of Insurance Act which were construed by the Supreme Court in *Sarbati Devi* (supra) and has held that u/s 10(2) of the Employees Provident Fund Act, 1952, the amount is to "vest in the nominee" and has accordingly ruled that the nominee has not merely the right to receive the Fund, but the right to the Fund itself.

6. As I have already indicated. There cannot be a straight-jacket formula as to the ambit or gamut of the right of a nominee in respect of an amount or other property and whether the nominee has a bare right to receive the same or acquires a right in the property itself shall depend on the provisions of the statute authorising such nomination. If the statute does not provide for acquisition of right in or vesting of the property, the same shall devolve

according to the ordinary law relating to intestate succession and a nominee cannot exclude the legal heirs of the nominator. We must, therefore, consider the relevant provisions of the Banking Regulation Act, 1949 to ascertain the rights of a nominee in respect of a Safety Locker in a Bank.

7. The relevant provision is section 452E of the Act, contained in Part IIIB thereof, inserted by an Amendment in 1984. Subsection (I) provides that a hirer of a Locker may nominate another "to whom, in the event of the death of such individual (i.e. the hirer), the Banking company may give access to the locker and liberty to remove the contents of the locker". Section 452 A deals with rights of a nominee in respect of deposit of money and Section 452C deals with the rights of a nominee in respect of deposit of articles. Subsection (2) of Section 452A clearly provides that on the death of the depositor of money, "the nominee shall become entitled to all the rights of the .. depositor .. in relation to such deposit to the exclusion of all other person "In the case of deposit of money, therefore, the nominee, on the death of the depositor, not only acquires the right to receive the amount, but acquires in the amount, all the rights of the depositor to the exclusion of all other persons. The absence of any such provision vesting all the rights of the depositor in the nominee, in Section 452E is conspicuous, whereunder the nominee does not acquire any title in the Locker or its contents. Sub-section (3) of Section 452C dealing with deposit of articles also provides that on the death of a depositor, "the nominee shall .. become entitled to the return of the article to the exclusion of all other persons". The position, therefore, appears to be that while section 452A purports to confer on a nominee in respect of the deposit of money, not only the right to receive the amount but also the right to the amount itself, Section 452C purports to confer on a nominee in respect of a deposit of articles only the right to the return of the article, but no right in the article itself.

8. It is true that while purporting to confer such rights, Section 452A and Section 452C use the expression "shall", Section 452E dealing with Safety Locker uses the expression "may" and does not ex facie purport to confer any title in the Locker or in its contents. But in respect of a Safety Locker, even the hirer himself acquires only a right to the exclusive use of the Locker so long the contract of hiring continues. The Bank does not know and is not also expected or required to know about the contents of the Locker and whatever might have been kept therein is done without the knowledge and behind the back of the Bank. The contents of a Safety Locker thus being not the concern of the Bank, the relevant law cannot be expected to provide for vesting or transmission of interest in such contents in the nominee.

9. One can understand the rationale behind the different provisions of Section 452A, dealing with deposit of money, of Section 452C dealing with deposit of article and of Section 452E dealing with safety Locker. In the case of deposit of money there being always a presumption that the money belongs to the holder of the account. Section 452A not only provides for release of the money to the

nominee but proceeds further to provide that the nominee shall stand vested with all the rights of the depositor. In the case of deposit of any specific article by the depositor to the Bank, the Bank having received the article and having possessed the same in specie, has been obliged u/s 45ZC to return the article to the nominee. But since one may have an article without any right or title thereto, the Section does not provide for any transmission of interest from the depositor to the nominee.

10. But in the case of a Safety Locker, all that the Bank does is to rent out a space or a receptacle which, if not terminated earlier, comes to an end with the death of the hirer. Bank has no knowledge of or concern with what is stored in the Locker and the hirer, like a lessee, is under an obligation to remove all the contents therefrom and deliver the vacant possession of the Locker to the Bank on the termination of the hiring. As the hiring comes to an end with the death of the hirer, Section 45ZE provides that access may be given to the nominee to the Locker along with the liberty to remove the contents to enable the nominee to deliver vacant possession of the Locker.

11. Be that as it may, coming to the case at hand, I must confess my utter inability to understand as to why and how the respondent Bank could insist on a succession certificate being produced by the nominee before granting her access to the Locker. The Bank, and also its legal adviser who, in his reply to the petitioner's lawyer, so loudly insisted on a succession certificate, ought to have noted that under S- 370 of the Succession Act, 1925, there can be succession certificate only for debts and securities. The expression "security" has been defined in S. 370(2) and cannot include the right of access to a Safety Locker and the right to receive or remove its contents. As to the expression "debt", there are authorities for the view that the expression in S. 370 does not include moveable property other than a specific or ascertained sum of money. But even going by its wider connotation, the expression debt would mean a liability of one person to another person, in cash, or in kind, whether secured or unsecured, which is or can be ascertained. The liability of, say, a lessor, to allow the lessee access to the demised property on the termination of a lease in order to enable the lessee to remove his belongings therefrom is obviously not a debt or security, by any test within the meaning of S. 370, Succession Act.

12. Then again, the petitioner may have no knowledge at all as to the contents of the Safety Locker so that she could specify them in her application for succession certificate. Assuming *arguendo* that she knew the Locker to contain ornaments or other valuables, those, as pointed out by a Division Bench of this Court in *State Bank of India Vs. Netai Ch. Porel*, would not have been debts or securities within the meaning of S. 370, Succession Act.

13. A succession certificate does not decide or confer any title but merely clothes the holder of the certificate with the authority to realise the debts and securities belonging to the deceased and to give valid discharge. A nomination under S. 452E also can only vest the nominee with the authority to open the Locker hired

by the nominator and to receive and remove the contents. Sub-section (4) enjoins the Bank to prepare an inventory of the contents of the Locker and sub-s. (3) categorically provides that "on the removal of the contents of any Locker by any nominee, the liability of the banking company in relation to the contents of the Locker shall stand discharged." With these provisions staring at the face, and the Bank not disputing the validity or otherwise of the nomination, it had no business to ask the nominee to produce a succession certificate and thus to indulge in fruitless logomachy. More so, when the materials on record go to show that the petitioner has clearly declared that her husband left no other heir and produced certified copy of the judgment to show that the civil suit filed against the petitioner has been dismissed. If any other person has or can have any claim in respect of the contents of the Locker, he would have to sort it out with the petitioner. But the Bank is not required to behave like a busybody and develop any headache over the matter. The Bank and its legal advisers ought to have realised that the Bank is expected to adopt an attitude of cooperation, and not of a combatant, to its customers or their representatives.

14. The writ petition therefore must succeed. A rule do issue commanding the Respondents to forthwith provide the petitioner all reasonable and necessary access to the Safety Locker hired by her husband being Locker No. 158 Type "A" in the Durgapur Branch of the Punjab National Bank and to allow her all necessary facilities to remove the contents of the said Locker after preparing such inventory thereof as required under S. 452E(4) of the Banking Regulation Act, 1949. In view of the unreasonable and unjustified stand taken by the Bank in the matter, I also direct the Respondents to pay to the petitioner Rs. 500/- as costs.

15. Petition allowed.