
(1996) 07 MP CK 0069

In the Madhya Pradesh High Court

Case No : Civil Revision No. 739 of 1996

Sharda Chopra and Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Banking Regulation Act, 1949 — Section 45ZF
Succession Act, 1925 — Section 370

Citation : AIR 1997 MP 196 : (1998) 91 CompCas 605 : (1996) ILR (MP) 503 :
(1996) 41 MPLJ 1001 : (1996) MPLJ 1001

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : N.K. Mody, for the Appellant; A.M. Naik, for the Respondent

Final Decision : Allowed

Judgement

T.S. Doabia, J.

The players to the game are bound by the Rules of the game. This is more so in the case of a referee, who is instrumental in laying down the Rules. State Bank of India is in the position of a referee. It has laid down certain norms, which deal with the method and manner in which the articles kept in (the bank's safe deposit locker are to be dealt with. The instructions on the point have been made available by Shri A.M. Naik, Advocate appearing for the State Bank of India. Before noticing the facts and legal position, it would be apt to notice these instructions.

"6.4. Return of articles kept in the bank's safe deposit vault/scaled boxes.-

(i) In the case of articles in Safe Deposit Lockers/sealed boxes in safe deposit, an inventory should be prepared in the presence of two officers of the branch and two independent witnesses. In appropriate cases, the services of a notary, if available may also be availed of, as an independent witness.

(ii) A stamped letter of indemnity on form given in Annexure VII should be

executed by the claimants with two sureties (persons other than those swearing to the affidavits) who are considered individually good for the amount involved. (Stamp duty applicable in Madhya Pradesh, at present is Rs. 5/-).

Note : (a) The letter of indemnity should be signed by all the legal heirs of a deceased constituent. If the heir(s) disclaim the right to the property of the deceased constituent, he/they need not join in the indemnity. If the heir(s) disclaim merely the right to receive from the Bank the assets of the deceased constituent, but not their right in the assets themselves, all the heirs must join the indemnity to be executed to the Bank.

(b) The sureties who are relatives of the deceased may be accepted provided they are not directly involved as claimants and are considered individually good for the amount involved.

(c) The letter of indemnity should not be attested.

(ii) In case where the rents of the lockers are not being paid by the heirs of the deceased hirers notices and reminders on forms COS 405 and 406 should be posted to the last known address of such deceased hirer; such notices may also be given further by way of public notices in leading newspapers with the approval of the controlling authority in each case. After the expiry of the period of such notices, the branches should proceed to break open the lockers with the prior approval of the controlling authority and deal with the contents in accordance with the agreement entered into with the Bank. Also if the contents of lockers are not claimed and the arrears of rent are not paid for a period of three years, no valid claim can be lodged against the bank for the contents of the locker. The Bank will be free to dispose of the contents of the locker in whatever manner it deems fit and recover the arrears of rent due. In cases where the articles are of substantial value, it would be sufficient only such part of the articles as will realise enough for satisfying the bank's accumulated charges and other dues is disposed of. The right to sell the whole or part of the articles will depend on the composition and value of the articles held and the amount of the bank's claim involved, in individual cases. Also, as each case may involve complications peculiar to it, each case should be referred to the controlling authority for suitable instructions for the action to be followed."

Facts are as under:--

One Shri S.L. Chopra was having a locker with the State Bank of India. He has since died. Regarding his assets the present petitioners who claim to be his heirs had approached the 5th Additional District Judge Gwalior for a succession certificate. This has been duly granted. This deals with various other items, including fixed deposit accounts with various banks. State Bank of India is also one such bank. Armed with the succession certificate, they requested the State Bank of India to permit the present petitioners to have access to the bank's locker. This has been declined. The Court below has declined to issue succession certificate regarding the articles put in the locker. This is how the present revision

has been filed.

The question which arises for determination is whether a succession certificate has necessarily to be obtained for having access to valuable lying in the Bank's locker. This aspect is again subject-matter of instructions issued by the Bank. This may also be noticed:--

"1. In those cases, where disposal of assets of deceased constituents is not possible without legal representation, the claimants will be advised to obtain a legal representation from a competent Court. Legal representation may be of three kinds.

(i) Succession certificate.

(ii) Letters of Administration.

(iii) Probate.

A succession certificate is issued to a claimant only in those cases, where the claim pertains to debts, shares and securities. Where the deceased, has left a will or where the assets are in the nature of articles/valuables, succession certificate cannot be issued.

On the other hand, letters of administration can be issued either in respect of money or in respect of articles/valuables.

A probate is issued only in those cases, where the deceased has left a will. By a probate the Court, after examining witnesses and hearing interested parties, certifies that the will in question is the last, genuine and effective will of the deceased. Under the Succession Act, the Court has powers instead of issuing a probate to grant letters of administration with the will annexed and upon grant of such letters of administration, the administrator appointed thereby has authority to deal with the estate of the deceased, just like an executor appointed under a probate. Forms of succession certificate, letters of administration on and probate, as provided under Indian Succession Act are appended as Appendix "I", "J" and "K" respectively."

Effect, extent and application of legal representation:--

1 A succession certificate is effective throughout India. In items of Section 381 of Indian Succession Act. a payment made on the basis of a succession certificate affords full indemnity to the person making payment, provided such payment is made in good faith. Thus, when any suspicious circumstances are within the knowledge of the Bank, it is duty bound to make all necessary enquiries, notwithstanding the fact that a succession certificate has been produced."

Before noticing the judicial precedents which deal with the requirement of furnishing or not furnishing a succession certificate, it would also be apt to notice the provision of Section 45 of the Banking Regulation Act, 1949. This reads as under:

"45ZF. Notice of claims of other persons regarding safety lockers not receivable. -

No notice of the claim of any person, other than hirer or hirers of a locker, shall be receivable by a banking company nor shall the banking company be bound by any such notice even though expressly given to it;

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to the locker or its contents is produced before the banking company, the banking company shall take due note of such decree, order, certificate or other authority."

The judicial precedents which support the proposition that a bank cannot deny access to , nominee to the locker and that it cannot insist that the concerned party must have a succession certificate be noticed. One such decision is reported as Rama Chakravarty Vs. Manager, Punjab National Bank and others, . The Calcutta High Court placed reliance on an earlier decision reported as State Bank of India Vs. Netai Ch. Porel, . Paras 10 and 13 are relevant for this purpose and these paras in so far as relevant be noticed:

"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."

xx xx xx xx xx "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 u/s 45ZE 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 subsection (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 as 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 persons 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 busy body 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."

In this regard, reference may be made to the view expressed by the Patna High Court in the case reported as *Mt. Shyam Sundari Devi and Others Vs. Sarti Devi and Others*, . The Patna High Court has taken a view that succession certificate is not to be granted qua articles which are lying in the locker, of a bank. See also the view expressed by the Calcutta High Court in the case reported as *Assam Bengal Railway Co. Ltd. Vs. Atul Chandra Sen*, ,

The contrary decision is that of the Allahabad High Court. This is reported as *Dina Nath Vs. Balkrishna and Another*, .

I am of the view that the view taken by the Calcutta and Patna High Courts seems to be correct. Not only it is correct but this is a just view. It appears that taking into consideration this aspect of the matter and with a view to provide easy access to the lockers to the heirs of the customer the bank has laid down certain guidelines. These guidelines as reproduced above safeguard the interest of the banks also. In the present case, so far as the identity of the heirs of S.L. Chopra is concerned, there is no dispute. Six of his heirs joined together to have a succession certificate. No other person objected to the succession certificate being granted in favour of the six heirs who figure as petitioners. Thus, the requisite satisfaction of the bank vis-a-vis the heirs and the claimants of Shri S.L. Chopra can be arrived at from this single factor. In addition to this, these petitioners are ready and willing to abide by the terms and conditions and the guidelines as reproduced above.

I am accordingly, of the view that the requirement to have a succession certificate vis-a-vis the articles lying in a bank's locker is not envisaged by Section 370 of the Indian Succession Act. For this, I would follow the Calcutta and Patna High Courts views. This view is indirectly supported by the decision given by the Punjab and Haryana High Court in the case reported as *Adarsh Rattan and Others Vs. State Bank of India, Jalandhar*, . In the above case, it has been held that it is not necessary to obtain a succession certificate and if there is a dispute then the parties can get the matter settled by approaching the civil court. In this case, the requirement as indicated by the Punjab and Haryana High Court is not required to be gone into. This is because a succession certificate already exists in favour of the petitioners. The identity of the heirs, of Shri S.L. Chopra stands duly established and identified. In this view of the matter, even though the view taken by the Court below that succession certificate is not required vis-a-vis the articles lying in bank's locker is upheld, yet a direction is given to the bank to release the articles by following the guidelines framed by it.

It may be seen that it may be possible that cases may arise where there is a serious dispute as to who should represent the estate of the deceased. In such a case furnishing of letter of indemnity may not be sufficient. Therefore, depending upon the facts and circumstances of the case, the bank would be within its rights

to contend that letter of administration is necessary. In such an eventuality, what was said by the Andhra Pradesh High Court in the case reported as State Bank of India Vs. Inuganti Venkata Satyanarayana Ramachandra Rao and Others, be attracted. However, as indicated above, this is not such a case. The identity of the heirs of Shri S.L. Chopra is fully established. Under the circumstances, direction is given to the bank to let the present petitioner have access to the articles lying in the bank's locker. They would, however, furnish a letter of indemnity. This indemnity would be equal to the value of the articles lying in the locker.

Disposed of accordingly.