
(2004) 01 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4070 of 2003

Sukhdev Kumar Puri

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 BC 526

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : S.P. Sethi, for the Appellant; Piyush Dharmadhikari, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

K.K. Lahoti, J.—Short facts of the case are that Janak Dulari Puri was the sister of petitioner. She died intestate. Janak Dulari Puri was having her account with respondent No. 2. After the death of Janak Dulari Pun, petitioner obtained succession certificate in respect of other securities of deceased Janak Dulari Puri, which is on record as Annexure P-2. As the respondent No. 2 did not permit the petitioner to operate the locker, the petitioner filed a suit for declaration that he is entitled for operation of locker. This suit was opposed by respondent No. 2 by filing an application under Order 7 Rule 11, C.P.C., that without seeking consequential relief of possession of locker, suit for mere declaration is not maintainable. The trial Court considering the objection raised by respondent No. 2 dismissed the suit vide order dated 30.4.2003. Thereafter petitioner filed this petition.

2. Learned Counsel appearing for respondent No. 2 raised a preliminary objection that the petitioner is having efficacious alternative remedy by filing appeal against the order Annexure P-9, by which the suit of petitioner was dismissed. In the circumstances this petition may not be entertained. But he could not point out from the rules of Bank, what will be procedure in these circumstances. But

considering the fact that objection raised by respondent No. 2, which was sustained by the trial Court and suit for declaration filed by petitioner was dismissed, while for operation of locker only a suit for declaration without seeking relief of possession of locker was maintainable. The objection raised by respondent No. 2 before the Civil Court that suit without seeking consequential relief was not maintainable itself was misconceived. As the petitioner has filed this petition after dismissal of the suit, in the circumstances, on the ground of aforesaid alternative remedy in peculiar circumstances of the case, this petition cannot be dismissed.

3. Petitioner who was granted succession certificate by the Civil Court in respect of other security of deceased Janak Dulari Puri, thereafter, filed suit for declaration that he is entitled to operate the locker No. 507 with respondent No. 2, has been deprived of the relief because of objection raised by respondent No. 2. The petitioner is prima facie entitled for operation of locker, but interest of respondent also deserves to be protected by making provision in respect of any further claimant of property of Janak Dulari Puri. And if the petitioner furnishes security and indemnity bond to the satisfaction of respondent No. 2 that in case in future any other claimant makes a claim in respect of aforesaid locker, the petitioner shall indemnify the Bank in respect of any claim or damages, he will be entitled to operate the aforesaid locker.

4. In view of aforesaid, this petition stands allowed and following directions are issued:

1. Petitioner shall file an indemnity bond and surety of reputed Account holder of the same Bank to the satisfaction of respondent No. 2 that in case, in future any other claimant makes any claim in respect of aforesaid locker, the petitioner shall indemnify the Bank any claim or damages, as may be sustained by the Bank, the petitioner shall be permitted to operate the locker.

2. Thereafter, the respondent No. 2, Branch Manager of State Bank of India, Main Branch, Civil Lines, Jabalpur on producing the key of locker by petitioner before him shall open the locker in the presence of petitioner and two independent reputed persons and will prepare the inventory in respect of goods including any valuables found in the locker, and shall also ascertain the present costs of the aforesaid goods. After preparation of inventory of the aforesaid goods/valuables, the goods/valuables shall be handed over to the petitioner and the said inventory be kept in the record of respondent No. 2 under the signature of petitioner, respondent No. 2 and two independent persons. One copy of inventory shall be given to the petitioner also.

No order as to costs.

C.C. as per rules.