Maya Devi Vs. Director General of Posts (Pli) Department and ors.

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Court : Delhi

Decided On : Aug-05-2014

Judge : Kailash Gambhir

Appellant : Maya Devi

Respondent : Director General of Posts (Pli) Department and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 4063/2014 MAYA DEVI Through: ..... Petitioner Mr. D.S. Kauntae, Advocate. versus DIRECTOR GENERAL OF POSTS (PLI) DEPARTMENT & ORS. ..... Respondents Through: Ms. Barkha Babbar, Adv. for UOI. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% 05.08.2014 KAILASH GAMBHIR, J.(Oral) 1. By this Writ Petition filed by Smt. Maya Devi, the petitioner seeks direction in the nature of certiorari to set aside the impugned order dated 4th April, 2014 passed by respondent No.2 which as per petitioner is illegal and contrary to the Hindu Succession Act, 1956 read with Section 39(5) of the Insurance Act, 1938. The petitioner also seeks a direction to the respondents to take all necessary steps to remit the insurance amount expeditiously, along with yearly bonus money, in favour of the petitioner, pursuant to her sons demise.

2. The learned counsel for the petitioner submits that the petitioners son viz. Mandeep Singh, while in service as a Sepoy in the Indian Army, took a postal life insurance policy for which a monthly premium of Rs.1,245/- was to be deducted from his salary. The date of maturity of the policy was 26th September, 2028. However, before the policy could mature the son died in harness, at his parental house on 5th August, 2011. The learned counsel for the petitioner submits that in the proposal filled by the son of the petitioner, he had nominated his father Sh. Attar Singh to be entitled to receive the insurance amount; the father died on 25th January, 2012, thereafter the present petitioner, his widow by a representation dated 9th March, 2012 requested the insurer to be considered as the only person entitled to receive the insurance amount. The learned counsel further submits that the respondents, in a most arbitrary and illegal manner rejected her request and instead required her to first obtain a succession certificate and held out to her that it on the basis of the succession certificate alone, the amount could be disbursed by them. The counsel further submits that due to the ill advise given to the petitioner, she filed an application for the issuance of succession certificate under Section 372 of the Indian Succession Act before the court of learned Civil Judge (SD), Charkhi Dadri, District Bhiwani, but the said petition was withdrawn by her so as to approach the appropriate legal forum to seek the release of the said insurance amount. The counsel further submits that the petitioner served a legal notice under Section 80 of Code of Civil Procedure, 1908 to the respondents but the same did not lead any fruitful results.

3. One of the main contentions of the counsel for the petitioner is that under the terms of insurance policy, there are two conditions for the settlement of early death claims. Under Rule 53 of POIF Rules, 2011 when the death of insurer takes place before the completion of three years from the date of acceptance of policy, the matter will be investigated thoroughly to find out as to whether the insurer had suppressed any material information which otherwise would not have allowed the proposer/ assured to be eligible for PLI/RPLI and it should also be enquired whether the insured was suffering from any disease prior to the taking of the policy. The second condition is under Rule 36(6)(e) which envisages that where the policy matures for payment during the life time of the person whose life is insured or where the nominee or, if there are more than one nominees, all the

nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy holder or his heirs or the legal representatives of the holder of a succession certificate. The submission of the counsel for the petitioner is that the case of the petitioner is not governed by either of the said rules and the petitioner being the only legal heir after the death of her husband is entitled to the amount of the said insurance policy which was taken by her son.

4. This contention is strongly refuted by Ms. Barkha Babbar, who appears on behalf of the respondents on advance notice. Learned counsel submits that the respondents cannot release the insurance amount in the absence of succession certificate as the widow of the son of the petitioner is equally entitled to the insurance amount as she is also a Class I legal heir. Counsel also submits that even as per the Will left by Mandeep Singh, the deceased son of the petitioner, he had nominated his widow to be one of the beneficiaries of his pensionary/ retiral benefits.

5. Indisputably, the son of the petitioner had died before the tenure of the policy was to mature. This is also not in dispute that he had nominated his father as his nominee to be entitled to get the said insurance amount. But unfortunately, he had also died on 25th January, 2012 before the respondents could release the said amount in his favour. The petitioner is the widow of Sh. Attar Singh, but it is also an admitted fact that the widow of son of the petitioner, who is daughter-in-law of the petitioner is also alive. The petitioner as well as the widow of son of the petitioner are Class I legal heirs. Therefore, under the Succession Act, both are entitled to the estate left by the deceased son of the petitioner. The issue with regard to the rights of the nominee was authoritatively settled in the case of Smt. Sarabati Devi & Anr. vs. Smt. Usha Devi:

1984. AIR346 where the Honble Supreme Court took a view that mere nomination made under Section 39 of the Insurance Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the insured. The nomination only indicates the hand which is authorised to receive amount on the payment of which the insurer gets valid discharge of its liability under the policy. It further held that the amount,

however, can be claimed by the heirs of the insured in accordance with the Law of Succession governing the same. The relevant paras of the said Judgment are reproduced as under:- We shall now proceed to analyse the provisions of Section 39 of the Act. The said Section provides that a holder of a policy of life insurance on his own' life may when effecting the policy or at any time before the policy matures for payment nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. If the nominee is a minor, the policy holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation or change is notified to the insurer if he makes the payment bon fide to the nominee already registered with him, the insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned Under Section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to Sub-section (7) of Section 39 of the Act here. But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy holder. If that is so, on the death of the policy holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament' in paragraph 16 of the decision of the Delhi High Court in Mrs. Uma Sehgal's case (supra). If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. It is

difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in Sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills, which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary succession is not relaxed even where wills are registered.

6. On perusal of copy of the insurance policy placed on record, this Court finds that the nomination of the father of the deceased Sh. Attar Singh was also under Section 39 of the Insurance Act, 1938. Had Attar Singh been alive, he as a nominee would have received the insurance amount not to his own benefit alone but to the benefit of all the legal heirs of the deceased. With the death of Attar Singh the position would not change. After his death now the petitioner and the widow of the deceased son of the petitioner are Class I legal heirs and therefore, in our view both of them are legally entitled to the estate left by the deceased. The respondents are, therefore, correct in their decision in requiring the petitioner to obtain a succession certificate and then to process the claim for the release of the said postal insurance amount. In the light of the above decisions, we do not find any infirmity in the impugned order.

7. The Writ Petition is accordingly dismissed. KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

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