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Court : Delhi

Decided On : Sep-20-2004

Reported in : 115(2004)DLT277

Judge : R.S. Sodhi, J.

Acts : [Indian Succession Act, 1925](#) - Sections 4, 6, 7, 8(2) and 278; [Banking Regulation Act, 1949](#) - Sections 45ZA; Banking Companies (Nomination) Rules, 1985 - Rule 2(1)

Appeal No. : FAO 201/2004 and CM. Appl. 8066/2004

Appellant : Sh. Ram Chander Talwar and anr.

Respondent : Devender Kumar Talwar and ors.

Advocate for Def. : Asit Tewari, Adv.

Advocate for Pet/Ap. : T.K. Ganju and; Swetank Shantanu, Adv

Judgement :

R.S. Sodhi, J.

1. This appeal is directed against the judgment dated 24.4.2004 of the Additional District Judge, Delhi in PC No.212/2001 whereby the learned Judge has issued Letters of Administration in respect of 1/3rd share belonging to the respondents

lying deposited in Union Bank of India, Kailash Colony, New Delhi and articles lying in locker No.854 on deposit on necessary court fee.

2. Brief facts of the case as noted by the Additional District Judge are as under:

'...a petition under Section 278 of the [Indian Succession Act, 1925](#) (for short the Act of 1925) for grant of letters of administration in respect of estate of late Smt.Vidyawati Talwar and late Shri Ganda Ram Talwar was filed. Petitioner and respondent no.2 are the sons and respondent no.3 is the daughter of said late Smt. Vidyawati Talwar and late Shri Ganda Ram Talwar. The case of the petitioner is that Shri Ganda Ram Talwar had died on 6.2.1995 whereas Smt.Vidyawati Talwar had bequeathed her last movable properties/assets. The Petitioner, being one out of the three legal heirs was entitled to 1/3rd share in the assets left by his deceased parents. According to the petitioner, respondent no.2 had been dealing with the accounts of the parents of the parties and all relevant documents like bank pass book and fixed deposit receipts were available with him. The petitioner undertook to administer the properties and credits of the deceased parents and to exhibit an inventory within six months of grant of the administration.

Respondents No.2 and 3 contested the petition by way of filing joint objections. It was stated that the petitioner had been practically disowned by deceased parents because of the reason that he was not looking after them. The behavior of the petitioner was not up to the mark. History of the petitioner about his education and working with some companies was also given, but the same is not very relevant. The ground on which the petition is opposed, is that in respect of amount lying in the bank account, respondent no.2 had been appointed nominee in the prescribed form as required under Section 45ZA of Banking Regulation Act, and Rule 2(1) of the Banking Companies (Nomination) Rules, 1985. The said nomination had been acted upon by the banker and 2/3rd amount lying in the account had already been paid to respondent no.2 and the remaining 1/3rd has not been paid in view of the injunction order passed by the learned Civil Judge, Delhi in Suit No.217/99. It was, however, not disputed by Respondents No.2 and 3 that the deceased parents of the parties had died intestate as far as the movable properties/assets are concerned.

On the basis of the parties, following issues were framed by me vide order dated 29.5.2002:

I) Whether the petition is not maintainable because of the alleged nomination in favor of respondent no.2 and Rule 2(1) of the Banking Companies Nomination Rule 2(1) of the Banking Companies Nomination Rules 1985 as alleged in para 3 of the preliminary objections?

II) Whether the petitioner is entitled to letter of administration as claimed by him u/s 278 of the [Indian Succession Act, 1925](#)?

III) Relief.'

3. It is contended by counsel for the appellants that deposits in Banks are covered under Section 45ZA of the Banking Regulation Act 1949, (hereinafter referred to as the Act), which in turn makes nominee of the depositor sole beneficiary and entitled to all rights of the sole depositor.

4. Counsel for the respondent on the other hand contends that a nominee is a trustee of the amounts deposited by the depositor and the legal heirs are entitled to receive their share under the relevant succession laws.

5. Heard counsel for the parties and have gone through the judgment under challenge. It appears to me that the trial court has returned its findings based on the judgment of the Supreme Court in Vishin N.Khanchandani & Anr. Vs . Vidya Lachmandas Khanchandani & Anr. : [2000]246ITR306(SC) , where the court has held as follows:

'The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the National Savings Certificates, to the nominee of the holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi case holds the field and is equally applicable to the nominee becoming entitled to

the payment of the amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those in whose favor the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.'

6. Although the wording Section 45ZA of the Act is not identical to the provisions under consideration by the Supreme Court yet proviso to Sub-section 4 of the Act suggests that the amount held by the nominee is subject to the rights of the other heirs of the deceased under the succession laws. In that view of the matter, I find no ground to interfere. FAO 201/2004 & CM.APPL.8066/2004 are dismissed.

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