

Ramesh Kumar Singh Vs. the Zonal Manager

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Court : Patna

Decided On : Jul-29-2009

Judge : Samarendra Pratap Singh, J.

Acts : Banking Regulations Act, 1949 - Section 45ZA and 45ZA(4); ;Indian Succession Act - Section 372; ;Hindu Succession Act - Sections 14 and 15

Appeal No. : CWJC Nos. 7297 and 7673 of 2009

Appellant : Ramesh Kumar Singh

Respondent : The Zonal Manager

Advocate for Def. : Mukund Jee, Adv.

Advocate for Pet/Ap. : Jagnnath Singh, Adv.

Disposition : Application allowed

Judgement :

Samarendra Pratap Singh, J.

1. Both the writ applications are taken up together as the issue involved in these two writ applications is as to whether nominee or Joint Account holder would be entitled to withdrawal of the amounts on death of the Account holder in preference to the legal heirs.

2. Heard the learned Counsel for the parties.

3. One Ranpal Bahadur Singh @ Mohan Jee, was having various bank accounts. Two of the Accounts were with the State Bank of India, Station Road Branch Ara and Allahabad Ara Branch, Ara. The number of Saving Bank Account of S.B.I. is 0119013799 whereas that of Allahabad Bank is 16328. The aforesaid Ranpal Bahadur Singh happened to be father-in-law of petitioner.

4. The claim of the petitioner is that Late Ranpal Bahadur Singh @ Mohan Jee opened a Joint Account with the petitioner in the S.B.I. Apart from this the petitioner was also made nominee. Late Ranpal Bahadur Singh also made him his nominee of Saving Bank Account No. 16328 of Allahabad Bank.

5. In support of his contention petitioner annexed Photostat copies of the Pass Books of S.B.I. as well as Allahabad Bank. Nevertheless, the Pass Book of S.B.I. does not clearly show that the petitioner was a joint Account holder with his father -in- law, Late Ranpal Bahadur Singh.

6. The petitioner on basis of aforesaid claims has filed these two separate writ applications for withdrawal of the sum of Rs. 5,13,799.90 paise and Rs. 2,61,228.40 paise with interest lying with S.B.I. and Allahab Bank respectively.

7. The petitioner submits that he is a nominee in one case and both Account Holder and nominee in another case. As such he would be the only person entitled to receive the aforesaid deposits. In support of his contention the petitioner placed reliance on Section 45ZA of the Banking Regulations Act, 1949 as well as Circular dated 9th June, 2005 of Reserve Bank of India. Curiously enough the petitioner has not stated that son of Late Ranpal Bahadur Singh had predeceased him leaving behind his wife and three minor sons. However, these facts have come to fore in this direction in the counter affidavit of the bank dated 29.7.2009.

8. In para 7 of the counter affidavit it is stated that Late Ranpal Bahadur Singh had a son Avinash Kumar Singh @ Mantu Singh, who had predeceased him. One Chinta Mani Devi wife of Late Avinash Kumar Singh had filed a succession case being Succession No. 19 of 2005 under Section 372 of Indian Succession Act for

issuance of succession certificate before Sub Judge Ist, Bhojpur at Ara. It would appear from the succession case annexed to counter affidavit that Late Avinash Kumar Singh died living behind his three minor sons. In the aforesaid succession case, one Anju Devi wife of Ramesh Kumar Singh (petitioner) has been impleaded as opposite party No. 1. It is unfortunate that the petitioner has not brought the aforesaid fact to the notice of this Court in the writ applications. It is submitted by the bank that dispensation of justice demands that money lying in the Account of Late Ranpal Bahadur Singh should be equally distributed among the heirs of late Ranpal Bahadur Singh.

9. The nomination for payment of depositor's money and the right of the nominee to receive it on death of depositor has been enumerated in Section 45ZA of the Banking Regulation Act, 1949 under Part 3. The provision allows depositor or depositors to nominate one person to whom in the event of death of the sole depositor or the depositors the amount may be returned by the banking company.

10. Clause 2 of Section 45ZA of Banking Regulation Act states that on death of the sole depositor, the nominee would become entitled to all the rights in relation to such deposit to the exclusion of all other persons unless the nomination is varied or cancelled. It further states that payment of deposited amount to the depositor's nominee would constitute a full and valid discharge of the banking company of its liability in respect of the deposit. However, the proviso to Sub-section (4) of Section 45ZA is very material. It states that nothing contained in this Sub-section (4) shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

11. It would be relevant to quote Section 45ZA of the aforesaid Act for ready reference:

(1) where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together, many nominee, in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the company.

(2) Notwithstanding anything contained in any other law for the time being in force or in any deposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) Whether the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge to the banking company of its liability in respect of the deposit.

Provided that nothing contained in this Sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

12. The R.B.I. being also conscious of the problem arising on account of death of a depositor has laid down guidelines for the banking company for discharge of its liabilities.

13. Clause 2.1 and 2.2 of the guidelines provided by RBI in its Circular bearing DBOD No. Leg. BC.95 /09.07. 005/2004-05 dated 9.6.2005 is quoted hereinbelow for ready reference:

Clause 2.1 : As you are aware, in the case of deposit accounts where the depositor had utilized the nomination facility and made a valid nomination or where the account was opened with the survivorship Clause (either or survivor or 'anyone or survivor'), the payment of the balance in deposit account to the Survivor(s) nominee of a deceased deposit account holder represents a valid discharge of the

banks liability provided:

(a) The Bank has exercised due care and caution in establishing the survivor(s) nominee and the fact of death of the account holder, through appropriate documentary evidence;

(b) There is no order from the competent Court.

Restraining the bank from making the payment from the account of the deceased, and

(c) It has been made clear to the survivor(s)/nominee that he would be receiving the payment from the bank as a trustee of the legal heirs of the deceased depositor, i.e. such payment to him shall not affect the right or claim, which any person may have against the survivor(s) nominee to whom the payment is made.

2.2. This clause of the aforesaid Circular states that subject to the conditions mentioned in 2.1 payment made to the survivor(s)/nominee would constitute a full discharge of the bank's liability, insistence on production of legal representation is superfluous and unwarranted and only serves to cause entirely available inconvenience to the survivor(s) nominee and would, therefore, invite serious supervisory disapproval. In such case, therefore, while making payment to the survivor(s) of the deceased depositor, the banks are advised to desist from insisting on production of succession certificate Letter of administration or probate, etc. or obtain any bond of indemnity or surety from the survivors(s) nominee, irrespective of the amount standing to the credit of the deceased account holder.

14. From the bare perusal of Section 45ZA as well as the guidelines of R.B.I., it is apparent that the bank would be obliged to accept the right of a nominee to receive the amount deposited in its Account by a depositor or depositors who have died.

15. Nevertheless the nominee under the policy does not become the absolute owner of benefits pursuant to the nomination. He or she is there for the purpose of giving valid discharge to the banking company. The nominee holds the benefit for the true legal heirs of the deceased. A nomination does not operate as intestate

succession but he merely holds the discharge for the heirs of the deceased as a mere trustee on behalf of the heirs who would eventually succeed to the estate of the deceased. The nominee would always remain accountable to the legal heirs.

16. Where a nominee is a person to whom the bank accounts would have ultimately devolved being the legal heir in preference to others, the banks could deliver the amount without insisting for sureties or personal bond. However, if a nominee is a person who would not have been entitled to receive the amount on death of depositors, in view of inheritance laws, the Bank may insist for furnishing bond of indemnity or sureties.

17. In the instant case, sons of the predeceased son of the Account holder alongwith their mother would be class I heir and possess better claim in preference to son-in-law in view of Sections 14 and 15 of the Hindu Succession Act. Thus though the son-in-law being a nominee or Account holder would be entitled to receive deposited amount, he nevertheless would be accountable to the legal heirs, who will have preferential claim over him. In such circumstance while the bank may permit the petitioner to receive the amount, it would require of him to furnish matching adequate sureties as well as bonds, by way of precaution.

18. With the aforesaid observation and direction these writ applications are allowed.

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