IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 23rd OF JULY, 2025

SECOND APPEAL No. 772 of 2006

SMT. BHARATI DEVI

Versus

SAINANI 18TH VAHINI BHARAT TIBBAT SEEMA AND OTHERS

Appearance:

Shri K.N. Gupta- Senior Advocate with Ms. Suhani Dhariwal – Advocate for appellant.

Shri Rajeev Shrivastava- Advocate for respondent No.1.

JUDGMENT

This Second Appeal, under Section 100 of CPC, has been filed by appellant against the observation made by Fourth Additional District Judge (Fast Track), Shivpuri (M.P.) in its judgment and decree dated 05.08.2006, in Civil Appeal No.163/2005 thereby setting aside judgment and decree dated 25.06.2005 passed by Second Civil Judge Class-II, Shivpuri (M.P.) in Civil Suit No.29A/2005.

2. The facts, necessary for disposal of present appeal, in short, are that respondent No.2 filed a suit for declaration that on the basis of her nomination

she is entitled to receive the dues of her deceased son-Hukam Singh. It was the case of respondent No.2 that she is the biological mother of her son Hukam Singh, who was working in 18th Battalion in ITBP on the post of *Sainik*. Her son Hukam Singh had made his wife Smt. Sharda Devi as nominee. However, on 01.07.1997, divorce took place between her son Hukam Singh and Sharda Devi and accordingly, in place of Sharda Devi, plaintiff/respondent No.2 was nominated as nominee and accordingly the orders were also issued. It was claimed that appellant/defendant No.1 was residing with her son Hukam Singh but by projecting in an illegal manner that she is the wife of Hukam Singh, is trying to receive the entire dues of Hukam Singh after his death. It was claimed that defendant No.1/appellant was never married to her son Hukam Singh and by preparing forged documents she is out and out to receive the dues of her son after his death. Thus, it was claimed that plaintiff may be declared as entitled to receive the dues on the basis of her nomination and defendant No.2/respondent No. 1 be directed to pay the dues of her son to the plaintiff.

3. Appellant/defendant No.1 admitted that deceased Hukam Singh was earlier married to Sharda Devi but also admitted that divorce had taken place. It was claimed that appellant/defendant No.1 was not the keep of Hukam Singh but in fact she is the legally wedded wife of Hukam Singh. After the divorce took place with the first wife, Hukam Singh married defendant No.1/appellant in accordance with Hindu rites and rituals on 08.06.1998 in Orccha Temple. The marriage was performed by observing all necessary rituals; even a reception was organized by her husband. After the marriage, she was residing with her husband at the place of his posting. She resided with her husband Hukam Singh as a wife and was blessed with a son. After two years of birth of her son, her husband Hukam Singh fell ill and ultimately he died during treatment. Accordingly, it was prayed that

the defendant No.1/appellant is the legally wedded wife of Hukam Singh and therefore she is entitled to receive the dues of Hukam Singh after his death.

4. The Trial Court, after framing issues and recording evidence, held that appellant/defendant No.1 is the legally wedded wife of deceased Hukam Singh but also held that plaintiff being nominee was entitled to receive the dues of late Hukam Singh. Thus suit filed by respondent No.2 was decreed.

5. Being aggrieved by the judgment and decree passed by the trial court, respondent No.1/defendant No.2 preferred an appeal, which was decreed vide judgment and decree dated 05.08.2006 passed by Fourth Additional District Judge (Fast Track), Shivpuri (M.P.) in Civil Appeal No.163/2005 and suit filed by plaintiff was dismissed. However, in paragraph 14 of judgment, it was mentioned that the ITBP Authority/defendant No.2 had made payment of dues of late Hukam Singh to a person other than the nominee and thus it has committed a serious irregularity. Accordingly, it was directed that action be taken against the concerned employee of the ITBP.

6. It is submitted by counsel for appellant that so far as dismissal of the suit filed by plaintiff/respondent No.2 is concerned, appellant has no grievance. But appellant has grievance to the observation made by the appellate court that ITBP had committed an illegality by making payment of the dues of late Hukam Singh to a person other than the nominee /appellant.

7. It is submitted that a nominee is nothing but a trustee who holds the money on behalf of the real owner. Once the trial court had given a categorical finding that appellant is the legally wedded wife of Hukam Singh, then without reversing that finding, the Appellate Court could not have held that the ITBP had committed a material irregularity by making payment of dues of Hukam Singh to a person other than the nominee.

8. None appears for respondent No.2, though served.

9. Considering the submissions made by counsel for appellant, this appeal is admitted on the following substantial questions of law:

> "1. Whether the Appellate Court erred in law by holding that ITBP had committed a material illegality by making payment of dues of late Hukam Singh to a person other than nominee?
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> 2. Whether the sweeping comment made by the Appellate Court in paragraph 14 of its judgment was warranted?"

10. This appeal is pending since 2006 and 19 long years have passed. Accordingly, the appeal is also heard finally.

11. The moot question for consideration is as to what are the rights of a nominee? Whether the nominee holds the property to the exclusion of the claim of the heirs of the deceased or the nominee holds the property as a trustee on behalf of the heirs?

12. The Hon'ble Supreme Court in the case of **Sarbati Devi (Smt) And Another Vs. Usha Devi (Smt)** reported in **(1984) 1 SCC 424**, has held in paragraphs 4 and 8 as under:-

> **4.** At the outset it should be mentioned that except the decision of the Allahabad High Court in *Kesari Devi* v. *Dharma Devi* [AIR 1962 All 355 : 1962 All LJ 265] on which reliance was placed by the High Court in dismissing the appeal before it and the two decisions of the Delhi High Court in *S. Fauza Singh* v. *Kuldip Singh* [AIR 1978 Del 276] and *Uma Sehgal* v. *Dwarka Dass Sehgal* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] in all other decisions cited before us the view taken is that the nominee under Section 39 of the Act is nothing more than an agent to receive the money due under a life insurance policy in the circumstances similar to those in the present case and that the money remains the property of the assured during his lifetime and on his death forms part of his estate subject to the law of succession applicable to him. The cases which have taken the above view

are *Ramballav Dhandhania* v. *Gangadhar Nathmall* [AIR 1956 Cal 275] ; *Life Insurance Corporation of India* v. *United Bank of India Ltd* [AIR 1970 Cal 513] ; *D. Mohanavelu Mudaliar* v. *Indian Insurance and Banking Corporation Ltd.*, *Salem* [AIR 1957 Mad 115 : (1956) 1 LLJ 498 : (1955-56) 9 FJR 160] ; *Sarojini Amma* v. *Neelakanta Pillai* [AIR 1961 Ker 126 : (1961) 31 Com Cas 86 : 1960 KLT 1319] ; *Atmaram Mohanlal Panchal* v. *Gunvantiben* [AIR 1977 Guj 134 : 18 GLR 668] ; *Malli Dei* v. *Kanchan Prava Dei* [AIR 1973 Ori 83] and *Lakshmi Amma* v. *Saguna Bhagath* [ILR 1973 Kant 827] . Since there is a conflict of judicial opinion on the question involved in this case it is necessary to examine the above cases at some length. The law in force in England on the above question is summarised in *Halsbury's Laws of England* (4th Edn.), Vol. 25, para 579 thus:

> "579. *Position of third party.*—The policy money payable on the death of the assured may be expressed to be payable to a third party and the third party is then prima facie merely the agent for the time being of the legal owner and has his authority to receive the policy money and to give a good discharge; but he generally has no right to sue the insurers in his own name. The question has been raised whether the third party's authority to receive the policy money is terminated by the death of the assured; it seems, however, that unless and until they are otherwise directed by the assured's personal representatives the insurers may pay the money to the third party and get a good discharge from him."

8. We have carefully gone through the judgment of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring *up* only on the death of the assured. The Delhi High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of

the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law. The second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1)(*kb*) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment debtor shall be exempt from attachment by his creditors. The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. We find it difficult to treat a nominee as being equivalent to an heir or legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in appreciating the two decisions of the Madras High Court in *Karuppa Gounder* v. *Palaniamma* [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] and in *B.M. Mundkur* v. *Life Insurance Corporation of India* [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . The relevant part of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] reads thus: (AIR p. 40, paras 10, 11)

> "10. In Karuppa Gounder v. Palaniamma [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] , K had nominated his wife in the insurance policy. K died. It was held that in virtue of the nomination, the mother of K was not entitled to any portion of the insurance amount.
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> 11. I am in respectful agreement with these views, because they accord with the law and reason. They are supported by Section 44(2) of the Act. It provides that the commission payable to an

> insurance agent shall after his death, continue to be payable to his heirs, but if the agent had nominated any person the commission shall be paid to the person so nominated. It cannot be contended that the nominee under Section 44 will receive the money not as owner but as an agent on behalf of someone else, vide B.M. Mundkur v. Life Insurance Corporation [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . Thus, the nominee excludes the legal heirs."

13. Similarly, the Hon'ble Supreme Court in the case of **Vishin N. Khanchandani And Another Vs. Vidya Lachmandas Khanchandani And Another** reported in **(2000) 6 SCC 724** has held in paragraphs 7 and 13 as under:

> **7.** Mr Sanjay K. Kaul, Senior Advocate appearing for the appellants submitted that Section 6 of the Act very unambiguously provides that notwithstanding anything contained in any law for the time being in force or in any disposition, testamentary or *otherwise*, in respect of any savings certificate where a nomination is made, the nominee shall, on the death of the holder of the savings certificate, become entitled to the savings certificate and to be paid the sum due thereon to the exclusion of all other persons. Referring to sub-section (3) of Section 6, the learned counsel submitted that in case where the nominee is a minor, the holder of the savings certificate has a right to make the nomination to appoint in the prescribed manner any person to receive the sum due thereon in the event of his death during the minority of the nominee. It is contended that if the intention was not to entitle the nominee to be paid and to retain the sum due on such National Savings Certificates, there was no necessity of making a provision as has been incorporated in sub-section (3) of Section 6. Section 7 was also relied upon to urge that after the death of the holder, the nominee becomes entitled to the payment of the sum due without there being any further obligation upon him. In support of such an argument further reliance was placed upon sub-sections (3) and (4) of Section 7. He also tried to distinguish the verdict of this Court in *Sarbati Devi* v. *Usha Devi* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] by pointing out the difference of the language and phraseology in Section 6 of the Act and Section 39 of the Insurance Act. According to him the words, "on the death of the holder of the

> savings certificate, become entitled to the savings certificate and to be paid the sum due thereon to the exclusion of all other persons", appearing in Section 6 of the Act have not been incorporated in Section 39 of the Insurance Act suggesting that the legislature had intended to make the nominee absolute owner of the value of the certificates.
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> **13.** In the light of what has been noticed hereinabove, it is apparent that though the language and phraseology of Section 6 of the Act is different from the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. 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* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] 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 favour the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.

14. Thus, it is clear that merely because a person has been made a nominee, would not receive the benefits in his own personal and individual capacity, but he would receive it as a trustee with liability to return the amount to those in whose favour the law creates a beneficial interest. The nominee will be governed by the law of succession.

15. If the facts of this case are considered, then it is clear that the Appellate Court, without disturbing the findings recorded by the Trial Court that appellant/defendant No.1 is the legally wedded wife of Hukam Singh has given a

sweeping comment that the officers of ITBP had committed a material illegality by making payment of money to a person other than the nominee. If the ITBP authorities have made payment to the wife of the deceased employee, then it cannot be said that they have committed any illegality by making payment to her.

16. Under these circumstances, this Court is of considered opinion that not only the observation made by the lower Appellate Court in paragraph 14 was unwanted, but it is also contrary to law.

17. Both the Substantial Questions of Law are answered in affirmative.

18. Accordingly, the observation made by the Appellate Court [(i.e. Fourth Additional District Judge (Fast Track), Shivpuri (M.P.)] in paragraph 14 of the impugned judgment and decree dated 05.08.2006 passed in Civil Appeal No.163/2005 is hereby set aside.

19. Appeal succeeds and is ***allowed***.

(G.S. Ahluwalia)
Judge

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