IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 240 OF 2024

1. Priya d/o Praveen Maloo after marriage Priya w/o Gagan Grower, Aged : 37 Years, Occu : Business and Agriculturist, at present R/o Villa number 12, Cluster number 6, Konark Avenue 9, Kumar City, Wadgaon Sheri, Pune.

2. Purva d/o Praveen Maloo after marriage Purva w/o Devashish Rathi, Aged : 33 Years, Occu : Business and Agriculturist; both R/o Ambapeth, Amravati, Tahsil and District Amravati.

   Nos.1 and 2 through their Power of Attorney holder Varun s/o Pranam Maloo, Aged : 30 Years, Occu : Business, R/o Ambapeth, Amravati.

3. Pushpa w/o Balkrushna Maloo
   Aged 78 Years, Occu : Household work, R/o Ambapeth, Amravati, Tahsil and District Amravati.

... PETITIONERS

V E R S U S

1. Meena w/o Praveen Maloo
   Aged : 50 Years, Occu : Household;

2. Parag s/o Praveen Maloo
   Aged : 19 Years, Occu : Student;

Both R/o Joshi Colony, Mangilal Plot, Amravati, District Amravati.

3. SBI Life Insurance Company Limited
having address at Sanjay Tidke Bhawan, Vijay Colony Road, Rukhmini Nagar, Vijay Nagar, Amravati.

4. Life Insurance Corporation of India
having address at Jivan Prakash, Divisional Officer, Shrikrishna Peth, Near Daffrin Hospital, Amravati. ... RESPONDENTS

AND
WRIT PETITION NO. 241 OF 2024

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V E R S U S

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Aged : 50 Years, Occu : Household;

2. Parag s/o Praveen Maloo
Aged : 19 Years, Occu : Student;

Both R/o Joshi Colony, Mangilal Plot, Amravati, District Amravati.

3. Aviva Life Insurance Company Limited, having address at Shop No. 245, 3rd Floor, Shri Ram Shyam Tower, Kings Way, Nagpur, through its Manager.

4. ICICI Prudential Life Insurance Company Limited, through Manager, having address at office premises No.1 and 2, B-Wing, First Floor, Vimaco Tower, Railway Station Bus Stand Road, Amravati, Tahsil and District Amravati.

5. Life Insurance Corporation of India, through Manager, having address at Jivan Prakash, Divisional Officer, Shrikrishna Peth, Near Daffrin Hospital, Amravati.

6. Max Life Insurance Company Limited
having address at 2nd Floor, Vimaco Tower,

Railway Station, Bus Stand Road,
Amravati – 444 601. ... RESPONDENTS

Mr. M. G. Bhangde, Senior Advocate assisted by Mr. A. G. Baheti and Mr. Rishi Chhabda, Advocate for Petitioners in both the Petitions.
Mr. Nayan Mirpuri, Advocate h/f Mr. P. P. Kothari, Advocate for Respondent No.4 in Writ Petition No. 240/2024 and for Respondent No.5 in Writ Petition No. 241/2024.
Mr. M. G. Sarda, Advocate for Respondent Nos.1 and 2 in both the Petitions.
Ms. A. S. Athalye, Advocate a/w Ms. A. A. Agrawal, Advocate for Respondent Nos.3 and 4 in Writ Petition No. 241/2024.

CORAM : R. M. JOSHI, J.
ARGUMENTS HEARD ON : JULY 02, 2025.
PRONOUNCED ON : JULY 18, 2025.

COMMON JUDGMENT

. Heard Mr. M. G. Bhangde, learned Senior Counsel assisted by Mr. A. G. Baheti and Mr. Rishi Chhabda, learned Counsel for the Petitioners and Mr. Nayan Mirpuri, learned Counsel h/f Mr. P. P. Kothari, learned Counsel for the Respondent No.4 and 5. None appeared for the Respondent Nos.1 & 2 and for the Respondent Nos.3 and 4.

2. In Writ Petition No. 240/2024 there is a challenge to the order dated 21/3/2023 passed below Exhibit-395 [which according to the Petitioners is infact passed below application (Exhibit-387)]. Whereas, order dated

21/3/2023 passed below Exhibit-387 [which is claimed to have been passed below Exhibit-395] is taken exception to in Writ Petition No. 241/2024.

3. By consent of both sides, these Petitions are heard finally at the stage of admission and decided by common Judgment, since similar questions of facts and law are involved therein.

4. The issue involved in these Petitions is, as to whether the impugned orders dated 21/3/2023 passed by the trial court rejecting application for withdrawal of the amount deposited in the Court towards the insurance claim, in the light of the provisions of Section 39(7) of Insurance Act, 1938 and rejection of claim of withdrawal of other amounts on the basis of Will as well as Section 8 of Hindu Succession Act, 1956 *(for short, 'the Act')* would be sustainable. In the context thereto, learned Counsel for the parties agitated the issue as to whether the provisions of Section 38(7) of the Act, would override the provisions governing law of succession applicable to the parties or not.

5. The facts which led to the filing of these Petitions can be narrated in brief as under :

(i) There is no dispute that Special Civil Suit No. 2/2022 came to be

filed by the Respondent Nos.1 and 2 amongst other reliefs seeking partition of the suit properties, which includes the maturity amount of life insurance policies of late Pravin Maloo as well as share in other properties of deceased Pravin, who died on 7/9/2021. The relationship between the parties is also not in dispute. Plaintiff No.1 is widow and Plaintiff No.2 is son of the deceased. Defendant Nos.1 and 2 are his daughters and Defendant no.3 is mother of Pravin. Plaintiffs as well as Defendant Nos.1 to 3 are Class-I heirs of deceased Pravin. According to the Plaintiffs, Pravin divorced his first wife Suneeta and permanent lumpsum alimony was was paid to her. Thereafter Plaintiff No.1 married to Pravin and Plaintiff No.2 is begotten from this valid wedlock.

(ii) The Plaintiffs challenged Will dated 19/4/2018, propounded by the Defendant Nos.1 and 2 being executed by the deceased in their favour; on the grounds that it does not bear signature of Pravin and there are no special circumstances to exclude Plaintiffs from the property etc. It is, thus, clear that the issue as to whether Will pronounced by the Defendant Nos.1 and 2 is final Will of the deceased, is the matter of evidence to be decided by the trial court. Needless to say that the decision of the said issue would have bearing on the rights claimed by the parties and final decree to be passed.

(iii) The Defendant Nos.1 and 2 on the basis of their nomination in the

insurance policies and Will executed by Pravin bequeathing the properties to them, claim share therein and seek direction for withdrawal of the said amount deposited by insurers as interim relief.

(iv) Record indicates that out of total number of 23 policies, Sr. Nos.1 to 14 and 20 to 22 are taken prior to year 2015. The policies at Sr. Nos.15 to 19 and 23 are taken after 2015. Admittedly, Defendant Nos.1 to 2 are nominees in respect of the said insurance policies.

SUBMISSIONS

6. The learned Senior Counsel appearing on behalf of the Petitioners submits that there is no dispute about the relationship between the parties and that the Petitioners and Respondent Nos.1 and 2 are Class-I heirs of deceased Pravin Maloo and the parties are Hindu and as such Hindu Succession Act would have application to them. It is his submission that the parties being Class-I heirs, are entitled for the equal share in the insurance policies and hence even otherwise withdrawal of 60% amount as claimed ought to have been allowed. It is his contention that the said application filed for withdrawal of the amount was resisted by the Respondent Nos.1 and 2 on technical ground. He, by placing reliance on Section 39(7), canvassed that with

introduction of Sub-sections (7), (8) and (9) by Amendment Act, 2015, the nominees have become the beneficiaries of the amount of insurance policies, and as such when Defendant Nos.1 and 2 are admittedly nominees of Insurance policies, would be entitled to receive the amount as claimed. Learned Senior Counsel took pains to take this Court to the entire law on the point by referring to the Judgments of different High Courts, irrespective of the fact that they support his contentions or not, which is highly appreciable. Thus, it is his submission that in view of the provision of Section 39(7) of the Act, there was no impediment for the trial court to permit the withdrawal of the amount of insurance policies. He submits that the intention of the legislature is absolutely clear from the wordings of said provision, which specifies that in case nominees are parents, spouse or children or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him. It is his submission that Sub-section (8) of Section 39 further confirms the said intention when it is stated that if there are more nominees than one, nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy, so much amount secured by the policy shall be payable to the heirs or legal representatives of the nominee or nominees and that they shall be beneficially entitled to such amount. Thus, it is his submission that the order passed by the

trial court ignoring facts on record with regard to the Will propounded by the Plaintiffs/Petitioners etc. deserve no acceptance. It is his further submission that trial court in spite of raising specific issue referring to Section 39 of the Act, has failed to consider the same and record findings thereon. To support his submission, he has placed reliance on the Judgments of the Rajasthan High Court in the case of ***Ramgopal and Others V/s General Public and Others***[1] and Andhra Pradesh High Court in the case of ***Mallela Manimala V/s Mallela Lakshmi Padmavathi and Others***[2].

7. The learned Counsel for Respondent supported the impugned order. He also fairly made submissions on the point of interpretation of Section 39(7) of the Act of 1938. It is his submission by referring to the Judgment of the Hon'ble Supreme Court in the case of ***Smt. Sarbati Devi and Another V/s Smt. Usha Devi***[3] that it is the settled position of law that nominee's interest in the amount received under the policy would be just to receive the said amount and to distribute the same in view of the law of succession applicable to the parties. It is his further submission by referring to the Judgment in the case of ***Shakti Yezdani and Another V/s Jayanand Jayant Salgaonkar and Others***[4] that in respect of similarly worded provisions under the Banking Regulation Act it is

1 2019 SCC OnLine Raj. 2199
2 2023 SCC OnLine AP 459
3 (1984) 1 Supreme Court Cases 424
4 (2024) 4 Supreme Court Cases 642

held that the said provision would not override the law of succession. It is his submission that in the said provision, the benefit was to be vested in the nominee and in spite of the same, it is held by the Hon'ble Supreme Court that he would not become absolute owner to the exclusion of the other legal heirs.

PRECEDENTS

8. This Court has advantage of going through divergent views taken by the High Courts on the interpretation of Section 39(7) of the Act. It would be fruitful to record some of observations/findings of said Courts.

8.1. Rajasthan High Court in the case of ***Ramgopal*** *(supra)*, rejected the plea of Petitioner therein holding that Section 39(7) of the Act has no application to the case, as the insured died on 14/12/2013. It is, however, held in paragraph Nos.9 and 10 as under :

> *"9. As per the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the appellants, the nominee of insurance policy receives the insured amount and the legal representatives of the assured can claim their share as per Law of Succession. However, in the year 2015, amendment has been made vide the Insurance Laws (Amendment) Act, 2015 and as per the same, the nominee alone gets the amount on account of death of the insured. No other person can raise claim with regard to the said amount.*

> *10. Section 39(10) of the Act as added by Amendment Act, lays down that the provision of Sub-section (7) shall apply to all policies of life insurance maturing for payment after the commencement of the said Act."*

8.2. Similarly, Delhi High Court in ***Shweta Singh Huria and Others V/s Santosh Huria and Another***[5] after taking into consideration submissions, provisions of the Act and views/recommendation of law commission has observed in paragraph No.31 as under :

> *"31. As is evident from a reading of the recommendations of the Law Commission, a distinction was carved out between 'beneficiary nominee' and 'collector nominee' and Section 39 of the Insurance Act, 1938 was amended accordingly, adding sub-section (7). Beneficiary nominee means a nominee who was entitled to receive the entire proceeds under an insurance policy and a collector nominee means a nominee other than a beneficiary nominee. Keeping this distinction in mind, sub-section (7) of Section 39 was carefully and cautiously drafted and the words used by the legislature are 'beneficial interest'."*

High Court, however, remanded the matter back to trial court as legal issue raised was not considered.

8.3. In case of ***Karanam Sirisha V/s Insurance Regulatory Development***

5 2021 SCC OnLine Del 2492

Authority and Others[6] Andhra Pradesh High Court held that :

> *"16. Under the amended sub-section 7, a beneficial interest is created in favour of the nominee, when such a nominee is one of the members of the family of the holder of the life insurance policy, enumerated in sub-section 7 (hereinafter referred to as the enumerated nominee). The enumerated nominee is not just an agent or trustee of the legal heirs of the policy holder. The enumerated nominee is conferred with an independent beneficial right over the money received by the enumerated nominee. Where an enumerated nominee dies, after the death of the holder of the policy and before receiving the sum assured, sub-section 8 mandates that the legal heirs of the enumerated nominee are entitled to receive the sum assured and not the legal heirs of the policy holder. Such a change, in the line of succession, is because the sum assured is to be received by the enumerated nominee, absolutely, in his own right and consequently the legal heirs of the enumerated nominee would be entitled to the sum assured. Both these sub-sections, read together, have created a right in favour of the enumerated nominee, to receive the sum assured in his/her own right and not as the agent of the legal heirs of the assured/policy holder.*
>
> *17. Viewed from any perspective, the provisions of Section 39 of the Insurance Act, now provide a right to the nominee enumerated in sub-sections 7 and 8 to receive the sum assured in his/her own right and not as an agent of the legal heirs of the policy holder. This view is also strengthened by the judgment of the Hon'ble High Court of Delhi in Shweta Singh Huria v. Santosh Huria."*

8.4. After holding so, High Court considered another aspect in context of Section 39(2) and observed as under :

6 2022 SCC OnLine AP 2772

"18. There is another factor which requires to be taken into account. Sub-section 2 of Section 39 of the Act, sets out the manner in which a nomination is to be made and the liability of the insurer in relation to payment of the sum assured to the nominee, in the following terms:

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

19. Sub Section 2 provides that a nomination has to be incorporated into the text of the policy itself and registered in the records of the insurer. The policy holder can change the nominee by way of an endorsement or a Will. However, an Insurer will not be liable for any bona fide payment made by the insurer to the earlier nominee if the change is not informed to the Insurer. This would mean that a change in the nominee can be made, by way of a Will, outside the text of the policy also. But, the same would not affect the liability of the Insurer who, has not been informed of the change carried out by the Will, and under a bona fide belief, pays out to the earlier nominee. The operative words here are "payment made bona fide". Payment made by an Insurer, after being informed of a change made through a Will, cannot be a bona fide payment which is protected under Section 39 of the Act. In such circumstances, the Insurer would have to either act in terms of the Will or await the

result of any litigation, in the event of the Will being challenged by any of the legal heirs of the policy holder."

8.5. The view taken in ***Karanam Sirisha*** *(supra)* came to be followed in ***Mallela Manimala*** *(supra)* by the Andhra Pradesh High Court.

8.6. Thus, these Judgments take view that the provision of Section 39(7) will override the law relating to the succession applicable to the parties.

8.7. On the other hand, Karnataka High Court in the case of ***Neelavva V/s Chandravva and Others***[7] has after holding that the view taken by Andhra Pradesh High Court and Rajasthan High Court appears to be plausible, went ahead to make observations in paragraph Nos.38 and 39 of the said Judgment as under :

"38. As already discussed, in two judgments the Andhra Pradesh High Court, and in one Judgment the Rajasthan High Court have taken a view that the provision will override the law relating to succession. Said interpretation also appears to be a plausible interpretation. However, unlike in those cases, this Court had the benefit of the ratio in Shakti Yezdani's case supra. This Court is also aware that in Shakti Yezdani's case supra, amended Section 39 of the Act was not under discussion but law relating to nomination under the Companies Act was under consideration.

7 2025 SCC OnLine Kar 1945

39. In addition to the reasons assigned, this Court has also noticed the following things to arrive at a different view than the view taken by Andhra Pradesh and Rajasthan High Courts :

(a) The Objects and Reasons are silent as to why the amendment was introduced. The mischief in the old provision is not discussed and so also no discussion as to what is sought to be remedied by way of an amendment.

(b) The provision does not define the expression "beneficial interest". Does it mean "beneficial title" or not is not clarified.

(c) The provision does not provide for an option to declare the nominee named in Section 39(7) as a "collector nominee" and by default he becomes "beneficiary nominee" though the policy holder may not carry such intention.

(d) The provision does not say as to whether it overrides the personal law relating to succession. The personal law, passed by the Parliament, providing a particular mode of succession, which at times run contrary to nomination is not amended and still operates. Two conflicting legislations (relating to succession) are not envisaged in the scheme of the Constitution.

(e) The nominees grouped as the "beneficiary nominee" include the 'father' of the policyholder who is a Class II heir and other nominees are Class-I heirs namely spouse, mother and children. At the same time, Class-I heirs namely the children of a predeceased son or daughter or widow of a predeceased son who are Class-I heirs are left out from the category of "beneficiary nominees" which tend to run contrary to the object of insurance which is aimed at covering the risk of the family of the policyholder."

8.8. High Court took a view that Section 39(7) does not override the

provision of Hindu Succession Act and hence Appellant nominee cannot claim absolute ownership over benefits flowing from policy.

8.9. Similar is the view taken by Allahabad High Court in the case of ***Kusum V/s Anand Kumar and Others***[8]. High Court has made following observations in paragraph No.20, which read thus :

> *"20. The conflicting judgments as recorded above by the Delhi High Court, the Andhra Pradesh High Court and the Madras High Court on the one hand and by the Karnataka High Court and Madhya Pradesh High Court on the other hand, clearly establishes that there is no common opinion with regard to the effect of change in Insurance Act, particularly Section 39(7), on the rights of the successors. In fact, the Delhi High Court, the Andhra Pradesh High Court and the Madras High Court have not gone into the effect of amendment in Section 39 of the Insurance Act vis-a-vis the rights flowing in favour of heirs under the Succession Act."*

8.10. Finally, it is held in paragraph Nos.32 to 35 as under :

> *"32. In the light of the judgment of the Supreme Court in LIC case, it is essential to notice that the insurance policy is basically a contract and the said contract is subject to the limitations and the restrictions as imposed by virtue of the Insurance Act which itself was enacted for regulating the business of insurance in India. The said Act was never enacted by the Parliament to govern the rights of succession in respect of the persons who are governed by their*

8 2025 SCC OnLine All 2646

individual succession laws, whereas the Hindu Succession Act was specifically enacted to codify the law of succession in respect of Hindus dying intestate. Clearly the issue of succession would be governed by a specific statute being the Hindu Succession Act and to that extent, the general law as flows from Section 39(7) under the Insurance Act has to give way.

33. It is also fairly well settled that the statues are considered to be intra vires and thus, the phrase "beneficial nominee" as flows from Section 39(7) has to be interpreted in the light of law as explained in Sarbati Devi case prior to the amendment under Section 39(7).

34. Holding the beneficiary to be a beneficial nominee to the exclusion of the heirs would lead to absurdity which was never intended by the statutes while amending the provisions of Section 39(7). Any other interpretation would be doing violation to the delicate balance of rights in between the nominee and the legal heirs whose rights flow from the Hindu Succession Act.

35. Thus, the contention of the petitioner is rejected for the following reasons:

(i) Section 39(7) of the Insurance Act which is pari materia to Section 45-ZA(2) and was incorporated to achieve similar objective having been interpreted in Ram Chander Talwar case to hold that the nominee cannot be held to be the owner of the money lying in the account. Section 39(7) also has to be interpreted to hold that the beneficial nominee cannot be said to be the owner of the money out of the proceeds of policy.

(ii) In view of the similar provision ·being interpreted in Shakti Yezdani case, it has to be held that the nominee would not unsettle the rights of the legal heirs by virtue of the respective succession act.

> *(iii) On harmonious interpretation of the two provisions i.e. the Insurance Act and the Hindu Succession Act, the rights conferred by the Hindu Succession Act will prevail over the rights claimed by the nominee under Section 39(7) of the Insurance Act, the succession act being specific to succession in contradiction to the Insurance Act which is general."*

8.11. It would be beneficial to refer to Judgment of the Division Bench of this Court in case of ***Shakti Yezdani and Another V/s Jayanand Jayant Salgaonkar and Others***[9] the matter pertains to the provision of Section 109-A and 109-B of the Companies Act, 1956 which contemplates the vesting of shares in the nominees to the exclusion of other persons. After having considered Judgment in case of *Ram Chander Talwar V/s Devender Kumar Talwar, (2010) 10 SCC 671* in respect of Section 45-ZA of the Banking Regulation Act, 1949 following observations are made in paragraph No.25, which read thus :

> *"25. Now we come to the decision of the apex court in the case of Ram Chander Talwar v. Devender Kumar Talwar [2010] 159 Comp Cas 646 (SC); (2010) 10 SC 671. The issue before the apex court was whether a nominee in the bank account held by the deceased can claim full rights over the money lying in the account to the exclusion of the legal heirs. Paragraphs 4 to 6 of the said decision read thus (pages 647 and 648 of 159 C-C) :*

9 2016 SCC OnLine Bom 9834

"Sub-section (2) of section 45ZA, reads as follows :

'45ZA. (2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, 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 to 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.'
Section 45ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of section 45ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed.

We find that the High Court has rightly rejected the appellant's claim relying upon the decision of this court invishin N. Khanchandani v. Vidya Lachmandas Khanchandani [2000] 102 Comp Cas 340 (SC); (2000) 6 SCC 724. The provision under section 6(1) of the Government Savings Certificates Act, 1959, is materially and substantially the same as the provision of section 45ZA(2) of the Banking Regulation Act, 1949, and

the decision in Vishin N. Khanchandani v. Vaidya Lachmandas Khanchandani [2000] 102 Comp Cas. 340 (SC);
(2000) 6 SCC 724, applies with full force to the facts of this case." (emphasis added)".

8.12. In paragraph No. 34, it is held that :

"34. The provisions relating to nominations under the various enactments have been consistently interpreted by the apex court by holding that the nominee does not get absolute title to the property subject matter of the nomination. The reason is by its very nature, when a shareholder or a deposit holder or an insurance policy holder or a member of a co-operative society makes a nomination during his life time, he does not transfer his interest in favour of the nominee. It is always held that the nomination does not override the law in relation to testamentary or intestate succession. The provisions regarding nomination are made with a view to ensure that the estate or the rights of the deceased subject matter of the nomination are protected till the legal representatives of the deceased take appropriate steps. None of the provisions of the aforesaid statutes providing for nominations deal with the succession, testamentary or non-testamentary. As observed by the apex court, the legislative intention is not to provide a third kind of succession. In Sarbati Devi v. Usha Devi (1984) 55 C-C 214 (SC); AIR 1984 SC 346, the apex court held in paragraph 5 which reads thus (page 218 of 55 C-C) :

"But the summary of the relevant provisions of section 39 given above establishes clearly that the policyholder 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 policyholder. If that is so, on the death of the policyholder, 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 Smt. Uma Sehgal v. Dwarka Dass Sehgal, ILR 1981 Delhi 315; AIR 1982 Delhi 36; [1983] 54 Comp Cas 842 (Delhi). 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 rigor of the rules governing the testamentary succession is not relaxed even where wills are registered." (emphasis added)

The object of the provisions of the Companies Act is not to either provide a mode of succession or to deal with succession. The object of section 109A is to ensure that the deceased shareholder is represented by some one as the value of the shares is subject to market forces. Various advantages keep on accruing to shareholders. For example, allotment of bonus shares. There are general meetings held of the companies in which a shareholder is required to be represented. The provision is enacted to ensure that the commerce does not suffer due to delay on the part of the legal heirs in establishing their rights of succession and claiming the shares of a company."

9. This Judgment was challenged before the Hon'ble Supreme Court. The Supreme Court in Judgment reported in the case of ***Shakti Yezdani*** *(reported in 2024(4) SCC 642) (supra)* accepted the findings recorded by the Division Bench of this Court and held that Section 109-A does not override the law of succession. In paragraph Nos.36 to 39, it is held that :

> *"36. The object behind the introduction of a nomination facility as can be appreciated was to provide an impetus to the corporate sector in light of the slow investment during those times. In order to overcome such conditions, boosting investors' confidence was deemed necessary along with ensuring that company law remained in consonance with contemporary economic policies of liberalization. In fact, the provision of nomination facility was made in order to ease the erstwhile cumbersome process of obtaining multiple letters of succession from various authorities and also to promote a better climate for corporate investments within the country. In contrast, one must note that ownership of the securities is not granted to the nominee nor there is any distinct legislative move to revamp the extant position of law, with respect to the same.*
>
> *37. At this juncture, it would hold us in good stead to note what the Court succinctly held in Salomon v/s Salomon & Co. (AC p.38)*
>
> > *".....In a Court of Law or Equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."*
>
> *In this context, the act of the legislature to enact Section 109-A in the Companies Act, 1956 and provide a nomination facility to holders also aids in ascertaining the intent. The Companies Act, 1956 and subsequent amendments as parliamentary legislations are*

rooted in Schedule VII List I Entry 43, which deals with incorporation, regulation and winding up of corporations. There is no mention of nomination and/or succession within the provisions or the Statement of Objects and Reasons or any other material pertaining to the Companies Act, 1956. Same is also not seen in subsequent amendments to the Act.

38. Reading the provision of nomination within the Companies Act, 1956 with the broadest possible contours, it is not possible to say that the same deals with the matter of succession in any manner. There is no material to show that the intent of the legislature behind introducing a method of nomination through the Companies (Amendment) Act, 1999 was to confer absolute title of ownership of property/shares, on the said nominee.

39. In fact, while interpreting other enactments that are similar in nature by virtue of the fact that the provision of nomination within the statute begins with a non obstante clause and/or is armed with the term "vest" such as the (Banking Regulation Act, 1949, the Government Savings Certificates Act, 1959 and/or the Employees' Provident Funds and Miscellaneous Provisions Act, 1952), multiple courts have rejected the argument that the nominee would become the absolute owner to the exclusion of the legal heirs. To hold otherwise would, in our opinion, exceed the scope and extent of Section 109-A of the Companies Act, 1956."

9.1. Finally, after considering legislative intent of creating scheme of nomination under Companies Act, 1956 it is observed in paragraph No.44 as under :

"44. The legislative intent of creating a scheme of nomination under the Companies Act, 1956 in our opinion is not intended to

grant absolute rights of ownership in favour of the nominee merely because the provision contains three elements i.e. the term "vest", a non obstante clause and the phrase "to the exclusion of others", which are absent in other legislations, that also provide for nomination.
Effect of "vest" in Section 109-A of the Companies Act, 1956 & Bye-law 9.11.1 of the Depositories Act, 1996."

9.2. Similarly, on the issue of third line of succession it is held in paragraph Nos. 55 to 58 as under :

"No third line of succession contemplated under the Companies Act

55. The appellants also contend that a nomination validly made under Section 109-A of the Companies Act, 1956 and Bye-law 9.11 of the Depositories Act, 1996 constitutes a "statutory testament" that overrides testamentary/intestate succession. It is worth noting that the argument of nomination as a "statutory testament" in respect of instruments such as life insurance policies, government savings certificates, provident fund, etc. were considered and emphatically rejected by this Court in multiple rulings.

56. In Sarbati Devi this Court held that nomination under Section 39 of the Insurance Act, 1938 (quaere Insurance Act, 1938) does not contemplate a third line of succession styled as a "statutory testament" and any amount paid to a nominee on the policy holder's death forms a part of the estate of the deceased policy holder and devolves upon his/her heirs, as per testamentary or intestate succession. Further, in Ram Chander Talwar, while discussing the rights of a nominee of a deceased depositors [Section 45-ZA(2) Banking Regulation Act, 1949], this Court concluded that the right

to receive the money lying in the depositor's account was to be conferred on the nominee but the nominee would not become the owner of such deposits. The said deposit is a part of the deceased depositor's estate and is subject to the laws of succession, that govern the depositor.

57. The appellants' have contended that nominations under Section 109-A of the Companies Act, 1956 & Bye-law 9.11 of the Depositories Act, 1996 suggest the intention of the shareholder, to bequeath the shares/securities absolutely to the nominee, to the exclusion of any other persons (including legal representatives) and constitutes a "statutory testament". However, aforesaid argument is not acceptable for the following reasons :

(a) The Companies Act, 1956 does not contemplate a "statutory testament" that stands over and above the laws of succession,
(b) The Companies Act, 1956 as iterated above is concerned with regulating the affairs of corporates and is not concerned with laws of succession.
(c) The "statutory testament" by way of nomination is not subject to the same rigors as is applicable to the formation and validity of a will under the succession laws, for instance, Section 63 of the Indian Succession Act, wherein the rules for execution of a will are laid out.

58. Therefore, the argument by the appellants of nomination as a "statutory testament" cannot be countenanced simply because the Companies Act, 1956 does not deal with succession nor does it override the laws of succession. It is beyond the scope of the company's affairs to facilitate succession planning of the shareholder. In case of a will, it is upon the administrator or executor under the

Succession Act, 1925, or in case of intestate succession, the laws of succession to determine the line of succession."

ANALYSIS

10. Chapter titled "Agreement" or "Transfer of Policies" and "Nomination" of the Insurance Act deals with the provisions relevant for the decision of this case. Section 38 deals with the assignment, and Section 39 with nomination of policies. It would therefore be fruitful to reproduce Section 39 of the Act, which reads thus :

*"**39. Nomination by policy-holder : -** (1) The holder of a policy of life insurance on his own life may, even 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 :*

Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the

insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policyholder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination :

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy :

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, shall not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy :

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policyholder on repayment of loan other than on a security of policy to the insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are

more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.

> *(11) Where a policy holder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.*
>
> *(12) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (3 of 1874), applies or has at any time applied :*
>
> *Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2015, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this Section, the said section 6 shall be deemed not to apply or not to have applied to the policy."*

11. In order to appreciate and decide issue involved herein, it would be necessary to take into consideration the basic principles relating to interpretation of any statute. At the first instance, the literal rule of interpretation needs to be applied and the meaning of the provision on its plain reading must be ascertained. It is only when there is any ambiguity in the phraseology used in the provision and it would lead the different interpretation, the Court is expected to apply the principle of harmonious construction. In case where the literal interpretation would lead to absurdity, with application of golden rule of interpretation even with modification would be permitted to a very limited extent. Similarly, the use of non obstante clause

per se would not lead to the conclusion that it overrides the law for the time enforced. So also only because such phraseology is not used, it cannot be said that it does not override any other statute, if it otherwise indicates so. Finally, the interpretation of the statute would depend upon the nature of the provision and its purpose and circumstances in which it is enacted. Needless to say that the statutory provision if is consistent with the other laws, the same can be applied to the extent of such consistency.

12. A plain reading of Sub-section (7) which came to be introduced by Amendment Act of 2015 with effect from 26/12/2014, shows that if the nominee/nominees is parents, spouse, child/children, then the said nominee/nominees would become beneficiary/beneficiaries of the amounts received on the maturity of the insurance policy. Later part of Sub-section (7) permits an objection to be raised in respect of nomination on the basis of nature of insured's title to policy could not have conferred beneficial information to nominee. Sub-section (8) specifically deals with the issue that in case nominee dies before the amount is realized, his legal heirs would be entitled to become beneficiaries of the said amount.

13. Though Sub-section (7) has been introduced to the statute books,

Sub-section (6) is very well retained therein. Sub-section (6) deals with general nomination and such a nominee would become entitle to collect benefits for its distribution to the persons entitled to receive the same. Whereas, sub-section (7) creates a separate/different class of nominee i.e. nominee/nominees included therein, would not remain to be the collector, but becomes a beneficiary. This intention of legislative gets re-enforced with introduction of Sub-section (8), which makes the legal heir of the nominee, a beneficiary, if nominee dies before the amount is received. When there was already a provision of nomination which was general in nature, unless legislature intended to create right in the maturity amount in certain class of nominee, there was no reason/purpose to introduce the amendment. In spite of the said fact, when amendment is introduced to create a special class of nominee with entrusting him benefits of the sum assured in life insurance policy, at first instance it must be held so. This intention is so obvious that it requires no further clarification, even in object or reasons of amendment, for that sake. Even otherwise only if the provision itself is ambiguous, the statement of objects would require a reference. These two provisions therefore leave no room for doubt that the nominee under section 39(7) would be a distinct class of nominee, who would be entitled to receive the maturity

amount of policy as beneficiary in exclusion of others including legal representatives of deceased.

14. In Judgment in case of ***Smt. Sarbati Devi*** *(supra)*, the unamended Section fell for the consideration of the Hon'ble Supreme Court. By taking into consideration the general nature of the nomination, it is held that since long High Courts have taken a view that Section 39 does not deprive heirs of their rights in amounts payable under the insurance policy. In para 12 of the said Judgment it is observed that, "yet parliament has not chosen to make any amendment to the Act" (emphasis supplied). It is further held that in such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. It is finally held that a mere nomination made under Section 39 does not have effect of conferring on nominee, beneficial interest in the amount payable under life insurance policy on death of the assured.

15. After the said Judgment, now Section 39 has been amended by the legislature and with introduction of provision of beneficiary/nominee, and hence in respectful view of this Court, the said Judgment cannot be said to be

conclusive to decide the issue, though point of law otherwise settled therein requires due consideration.

16. Insofar as, Judgment of ***Shakti Yezdani*** *(supra)* is concerned, it deals with provisions of Companies Act and reliance is placed on the Judgment based upon another Judgment of Supreme Court in respect of provisions of Banking Regulations Act. Pertinently, in both these enactments no two different categories of nominees are found, as it has been consciously done by legislature in bringing amendment to Section 39(7) of the Act. The said Judgment proceeded on the footing that Companies Act, 1956 has nothing to do with the law of succession and it is not intended to create another mode of succession. It is held that a shareholder is required to be represented in the general meetings of the Company, and therefore, it was opined that the provision is enacted to ensure that the commerce does not suffer due to the delay on the part of the legal heirs in establishing their right of succession and then claiming shares of the Company. On the contrary, in case of amendment to Section 39 of the Act, as stated above, there is inclusion of one more category of nominee as “beneficial nominee” by retaining the ‘collector nominee’ as contemplated by Section 39(6) of the Act. In respectful view of this Court though the general principles laid down on the said Judgment, are to be kept

in mind but the issue cannot be decided solely on the basis of conclusions drawn therein in respect of the provisions of Companies Act, 1956.

17. As far as the amendment to Section 39 of the Insurance Act is concerned, as observed above, Section 6 has been duly retained by the legislature, which makes the provision of a general nomination and a special category is created, wherein the person as mentioned in Sub-section (7) is treated as a beneficiary and not as a collector of the amounts arising out of the maturity of insurance policy. It only prescribes another mode of the disposition of particular property i.e. maturity amount of life insurance policy. In view of the nature of property, the inclusion of persons as nominees under Sub-section (7) also assumes relevance. The provisions as indicated herein above of sub-sections (7) and (8) more than sufficiently demonstrate that it is a spouse, children or parents shall be entitled for the benefits to the amount payable by the insurer and it is in exclusion of others. The literal interpretation of these provisions indicate that a separate class of nominee has been created, who would not remain as collector but would be beneficiary of the maturity amounts of the insurance policy. The provision is not couched with non obstante clause. So also having regard to the nature of amendment apparently legislation does not intend to override the other law for time being in force

which includes law of succession. This becomes beyond doubt when creditor's right against the policy amount has been duly protected. As held above, it however, clearly intends at providing a mode of disposition of specific property i.e. amount matured of life insurance policy. To decide, its effect if any, on law of succession it would be relevant to discuss broadly rule of succession applicable to individual's property of person professing different religions.

18. By very nature, the amended Section 39(7) of the Act, creates a mode of disposition of particular property i.e. the maturity amount of life insurance policy. There are several other modes provided by law for the disposition of the properties of an individual, such as sale, will, gift etc. Indian Succession Act, 1925 governs law of succession as to the property of deceased who died intestate, except to Hindus, Mohammedan, Buddhist, Sikhs or Jains. As per Section 30 of the said Act, a person is deemed to die intestate in respect of all properties of which he has not made a testamentary disposition, which is capable of taking effect. Chapter VI deals with testamentary succession, which applies to wills and cordials made by Hindus too. Incidentally, this is not only mode of testamentary disposition. Concept of *'donatio mortis causa'* a death bed gift, finds recognition under Section 191 of Indian Succession Act.

Needless to say that such gift takes effect on the death of donor. This is very well accepted mode of testamentary disposition.

19. By no stretch of imagination, it can be said that the legislation cannot create one more mode of disposition of property. Thus, any disposition of property as provided by law, which is not inconsistent with the law of succession applicable to the parties, must be given its full effect. The amendment in question cannot be challenged on the ground of competency of legislature to bring into effect such change.

20. Now it would be relevant to consider that such disposition is absolute or subject to law of succession applicable to the parties.

21. Generally, the maturity amount of life insurance policy is considered to be self-acquired property of insured, and of course, depending upon the source of payment of premium, it could also be held otherwise. Section 39(7) itself makes it clear, unless it is proved that holder of policy having rights to the nature of his title could not have conferred beneficial title on nominee. This provision itself is sufficient to indicate that by making nominee beneficially entitled, in fact it is intended to confer beneficial title to

the nominee. Thus, there is presumption in favour of nominee under this provision of conferment of beneficial title unless proved otherwise. The intention of legislation to confer such beneficial title, further strengthens the interpretation that by amendment others are implicitly sought to be excluded from benefits of policy.

22. It would not be out of context to consider the law relating to succession applicable to parties in nutshell, in relation to the amounts due from insurance policy on its maturity, where life of insured is covered. Thus, in case, where the maturity amount of insurance policy is self-acquired property of a Hindu, it is his sole discretion as to how the disposition of the self-acquired property is to be done. Thus, nomination of father even though he is not a Class-I heir of deceased to whom Hindu Succession Act applies, would not affect such right of disposition and there would be title with the insured to confer the same in favour of a nominee under Section 39(7) of the Act. However, in case of the said amount is held to be otherwise than self-acquired property, there would not be a title with insured to confer the same up on nominee and in such case the succession law would prevail over the provision of Section 39(7) of the Act.

23. This issue of title i.e. right to disposition would prominently arise in case of an insured being Mohammedan. Though there is no concept of joint family property in Mohammedans, but there is a restriction for the disposition of the properties taking effect after his death. A Muslim is prohibited from bequeathing the properties by Will (Wasiyat) beyond 1/3rd share, unless it is done by consent of all legal heirs. In such case, the nomination for the share more than 1/3rd amount of maturity value of insurance policy would be contrary to law of succession applicable to Mohammedans. The nomination by way of beneficiary title, therefore, would be restricted to the 1/3rd share in the amount. These are only examples, which would be sufficient to draw conclusion that no static rule can be applied in respect of the prevalence of the provisions of Section 39(7) of the Act over the succession laws.

24. One more aspect deserves consideration is as to whether the intention of insured in making nomination could be presumed to create beneficiary interest in respect of nomination done prior to Amendment of 2015. Section 39(10) only clarifies that provisions of Sub-section (7) and (8) shall apply to life insurance policies maturing for payment after commencement of Act, 2015. As far as nomination done prior thereto is concerned, in view of Sub-section (2) change in nomination is possible, though

its effect depends upon registration thereof or endorsement on policy itself. Thus, even after enactment of Amendment Act, 2015, it is open for insured to effect change in nomination, if so desired. Consequence of not changing the nomination is that the insured intended to make such nominee as beneficiary. Thus, the effect of nomination done prior to 2015, more particularly, prior to 26/12/2014 would be the same, as done thereafter.

25. Section 39(7) begins with words, “subject to the other provisions of this section”, meaning thereby the amended provisions cannot be read in isolation ignoring other part of Section. Sub-section (2) deals with effect of nomination which does not bear endorsement on the policy or registered with record relating to the policy. This provision further deals with the discharge of insurer in case subsequent nomination is not registered in record of policy or endorsed on policy document. It is, therefore, included in this provision that there could be change in the nomination by an endorsement or even by a will. Such subsequent endorsement or will, if not registered in record of policy or endorsed on the policy document, would not affect the lawful discharge of the insurer in case of payment made to the nominee, though it may give rise to claim of a person in the said amount of maturity.

26. In view of above discussion, following conclusions are drawn :

(a) It is held that with introduction of Sub-section (7) by Amendment Act, 2015 to Section 39 of the Act, two separate classes of nominees are created i.e. ‘collector nominee’ and ‘beneficiary nominee’.

(b) The nominee/nominees, under Sub-section (6) would be a nominee to collect the amount secured by the policy and payable to the survivors entitled to receive the same as beneficiary.

(c) The nominee/nominees covered by Sub-section (7) would be not nominees for collection of the amount, but would be beneficially entitled to the said amount payable by the insurer on maturity of policy and would acquire beneficial title therein.

(d) It is held that Sub-section (7) does not override the law of succession applicable to the parties, in case of inconsistency between two.

(e) The nomination under Sub-section (7) is held to be as one of the mode of disposition of property, but it shall be subject to the law of succession applicable to the parties.

(f) In case such nomination is consistent with the law of succession, the nominee shall be beneficially entitled to the said amount in exclusion of other legal heirs of the insured.

(g) In case of any conflict between Sub-section (7) of Section 39 and the law of succession applicable to the parties, the nominee shall be entitled to receive benefits to the extent it is in tune with the law of succession.

(h) Any subsequent intention of the deceased by will or endorsement not reflected in policy document or registered in policy record, may give cause for the dispute to be raised between the parties over the claims made in respect of such maturity amount of the policy, however, in view of Section 39(2) of the Act irrespective of the dispute between the parties, payment of the maturity amount of insurance policy to nominee under Section (7) would discharge the liability of Insurer.

27. Reverting back to the facts of the present case, learned trial court inspite of raising specific ground under Section 39(7) of the Act, has not dealt with the same. Insofar as the decision in respect of the withdrawal of amount deposited by insurer, the Court shall be required to take into consideration law on the point and also other provisions, in the light of facts laid down before it.

Prima facie perusal of the case sought to be made before the trial court indicates that there are creditors against the property of deceased. If it is so, the provisions of Sub-section (9) would come into play. As per the said provision, nothing in Sub-sections (7) and (8) shall operate to destroy or impede right of any creditor to be paid out of any insurance policy. Thus, trial court would be required to take into consideration all these facts and relevant provision of Section 39 before passing of order on application moved by the Petitioners/original Defendants. Similar is the case with their claim on the basis of will and right in the properties being Class-I heirs of deceased along with Plaintiffs.

28. Since the trial court has not taken into consideration of these relevant facts and provisions of law, the orders impugned cannot sustain and hence hereby set aside. The application (Exhibits-387 and 395) are relegated back to the trial court for decision afresh.

29. The Petitions stand disposed of in above terms.

(R. M. JOSHI, J.)

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