R

IN THE HIGH COURT OF KARNATAKA AT

DHARWAD BENCH

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

RFA NO.100471 OF 2023

BETWEEN:

1 . SMT. NEELAVVA @ NEELAMMA
W/O NEELAPPA SOMANAKATTI,
AGED ABOUT 61 YEARS,
OCC: HOUSEHOLD,
R/O YALLAPUR, TQ. LAXMESHWAR,
DIST. GADAG - 582116.

...APPELLANT

(BY SRI N M PATIL, ADVOCATE)

AND:

1 . SMT. CHANDRAVVA @ CHANDRAKALA @ HEMA
W/O RAVI SOMANAKATTI,
AGE 35 YEARS, OCC. HOUSEHOLD
R/O YELLAPUR, TQ. LAXMESHWAR,
DIST. GADAG
NOW AT MAILAR, TQ. HOOVINHADAGALI,
DIST. VIJAYANAGAR - 583219.

2 . CHAYAN S/O RAVI SOMANAKATTI
AGE 2 YEARS, OCC. NIL
R/O YALLAPUR, TQ. LAXMESHWAR,
DIST. GADAG,
NOW AT MAILAR, TQ. HOOVINHADAGALI
DIST. VIJAYANAGAR,
SINCE MINOR
REP. BY HIS MOTHER M/G
SMT. CHANDRAVVA W/O RAVI SOMANAKATTI,
AGE 35 YEARS, OCC. HOUSEHOLD,
R/O YALLAPUR, TQ. LAXMESHWAR,

DIST. GADAG, NOW AT MAILAR,
TQ. HOOVINHADAGALI, DIST.
VIJAYANAGAR - 583219.

3 . THE BRANCH MANAGER,
LIFE INSURNACE CORPORATION OF INDIA,
BRANCH NO.1, GADAG S.O. OFFICE,
MUNDARAGI ROAD, GADAG 582101.

4 . LIFE INSURANCE CORPORATION OF INDIA,
REPRESENTED BY BRANCH MANAGER,
VIJAYANAGAR, TQ AND DIST.
VIJAYANAGAR - 583201.

...RESPONDENTS

(BY SRI CHANDRASHEKAR M HOSMANI, ADV.FOR R1& R2,
SRI MRUTYUNJAYA TATA BANGI, ADV. FOR R3 & R4(VC))

THIS RFA IS FILED UNDER SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DTD 01.08.2023 PASSED IN O.S.NO.1/2022 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE, GADAG, DECREEING THE SUIT FILED FOR DECLARATION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17TH JANUARY, 2025 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

CAV JUDGMENT

This case is about the conflicting claims of a nominee and an heir under personal law, over the benefits flowing from a life insurance policy. Almost similar claims over the estate covered by nomination under different provisions of law, have been the subject matter of discussion in multiple Courts. On innumerable

occasions, the Courts have held that nomination cannot override the provisions relating to succession.

2. The amendment to Section 39 of the Insurance Act, 1938 (for short, 'the Act of 1938') as effected by Act No.5 of 2015 has raised the following question:

> *Whether "certain nominee/s" named in sub-Section (7) and (8) of Section 39 of the Act of 1938 who is/are conferred* ***"beneficial interest"*** *over the benefits under an insurance policy, exclude/s the heir/s from succeeding to the benefits flowing from the insurance policy?*

Facts:

3. Sri. Ravi Somanakatti who had subscribed to two Life Insurance Policies died on 20.12.2019. Insured was a bachelor when the policies were issued. Insured had nominated his mother as the nominee to the benefits (Rs.19,00,000/- and Rs.2,00,000/-) flowing from the policies, in the event of his death. By the time, the insured died, he had married and had a son from the marriage. However, the insured had not effected any

changes in the nomination to the policies referred to above.

4. The plaintiffs, (widow and minor son of late Ravi Somanakatti) filed the suit against the mother of late Ravi Somanakatti, claiming share in the benefits flowing from the insurance policies.

5. The suit is decreed. The Trial Court rejected the nominee's claim for entire benefit under the policies. The Court held that each of the plaintiffs and 1st defendant is entitled to 1/3rd share despite nomination.

6. Aggrieved by the aforementioned judgment and decree, the defendant is in appeal.

Contentions:

7. Learned counsel Sri. J.S. Shetty, appearing for appellant/defendant No.1 urged that the impugned judgment and decree overlooks Section 39 of the Act of 1938, as amended by the Insurance Laws (Amendment) Act, 2015. Amended Section 39 to the Act of 1938 confers absolute right in favour of a certain class of nominees, who are termed as 'beneficiary nominee' and

the mother falling under the category of *beneficiary nominee* excludes all other heirs under the personal law governing the parties from claiming any right over the benefits payable to the nominee under the insurance policy.

8. Learned counsel appearing for respondent No.1 would contend that the mother/defendant No.1 who is the nominee under the policies is only a custodian entitled to receive the benefits under the policy, on behalf of all the heirs, and the nominee owes a duty to disburse the amount to the legal heirs as per the personal law governing the succession.

9. Since the "Objects and Reasons" did not reveal the intention behind the amendment to Section 39 of the Act of 1938, this Court also requested the Central Government Standing Counsel to provide materials throwing light on the reasons behind the amendment.

10. Sri Mrutyunjaya Tata Bangi, the learned Counsel for respondents No.3 and 4 submits that the reasons for amendment to Section 39 of the Act of 1938, are not specifically mentioned in the Objects and Reasons

for the amendment. However, submits that the amendment is based on the recommendations in 190th Report of the Law Commission of India.

Discussions:

11. Relevant portions of Section 39 of the Act of 1938, read as under:

> ***39. Nomination by policy-holder.-***
>
> (1)The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:
>
> xxx.
>
> (2) xxx.
>
> (3) xxx.
>
> (4) xxx
>
> (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) xxx.

(10) The provisions of sub-section (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 policyholder 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.
>
> **(Emphasis supplied)**

12. Sub-Sections (7), (8) and (11) of Section 39 of the Act of 1938, are newly introduced by way of amendment and relevant for discussion in this case.

13. The right of a nominee under Section 39 of the Act of 1938, vis-à-vis the right of an heir under the personal law, was considered in ***Smt. Sarbati Devi & Anr vs Smt. Usha Devi***,[1] wherein the Apex Court has held that there is nothing in Section 39 of the Act of 1938 (before amendment) to hold that the provision overrides the law relating to succession.

14. The ratio in ***Smt. Sarbati Devi's*** case *supra*, is followed in various other cases where the provisions relating to nomination are interpreted to hold that such provisions do not override the law relating to succession.

15. The Apex Court in ***Shakti Yezdani and another v. Jayanand Jayant Salgaonkar and others***[2]

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[1] *(1984) 1 SCC 424*

[2] *(2024) 4 SCC 642*

has catalogued the cases which considered the conflicting interest of a nominee under various Acts and an heir under the law relating to succession. Paragraphs No. 40 to 44 of the said judgment are extracted as under.

> ***Nomination under various legislations***
>
> ***40.*** *In an illuminating list of precedents, this Court as well as several High Courts have dealt with the concept of "nomination" under legislations like the Government Savings Certificates Act, 1959, the Banking Regulation Act, 1949, the Life Insurance Act, 1939 (quaere Insurance Act, 1938) and the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. It would be apposite to refer to what the Court said on nomination, in reference to these legislations:*

Case Law/Precedent	***Held***
Sarbati Devi v. *Usha Devi* [*Sarbati Devi* v. *Usha Devi*, (1984) 1 SCC 424]	Nomination under Section 39 of the Insurance Act, 1938 is subject to the claim of heirs of the assured under the law of succession.
Nozer Gustad Commissariat v. *Central Bank of India* [*Nozer Gustad Commissariat* v. *Central Bank of India*, 1992 SCC OnLine Bom 481 : (1993) 1 Mah LJ 228]	Nomination under Section 10(2) of the EPF & Miscellaneous Provisions Act, 1952 cannot be made in favour of a non-family person. Relied upon *Sarbati Devi* [*Sarbati Devi* v. *Usha Devi*, (1984) 1 SCC 424] to state that the principles therein applied to the Employees Provident Funds Act as well and not merely restricted to the Insurance Act.
Vishin N. Khanchandani v. *Vidya Lachmandas Khanchandani* [*Vishin N.*	Nominee entitled to receive the sum due on the savings certificate under Section 6(1) of the Govt. Savings Certificates

Khanchandani v. *Vidya Lachmandas Khanchandani*, (2000) 6 SCC 724]	Act, 1959, but cannot utilise it. The nominee may retain the same for those entitled to it under the relevant law of succession.
Ram Chander Talwar v. *Devender Kumar Talwar* [*Ram Chander Talwar* v. *Devender Kumar Talwar*, (2010) 10 SCC 671 : (2010) 4 SCC (Civ) 313]	Nomination made under the provisions of Section 45-ZA of the Banking Regulation Act, 1949 entitled the nominee to receive the deposit amount on the death of the depositor.

41. A consistent view appears to have been taken by the courts while interpreting the related provisions of nomination under different statutes. It is clear from the referred judgments that the nomination so made would not lead to the nominee attaining absolute title over the subject property for which such nomination was made. In other words, the usual mode of succession is not to be impacted by such nomination. The legal heirs therefore have not been excluded by nomination.

42. The presence of the three elements i.e. the term "*vest*", the provision excluding others as well as a the clause under Section 109-A of the Companies Act, 1956 have not persuaded us in the interpretation to be accorded vis-à-vis nomination, in any different manner. Different legislations with provisions pertaining to nomination that have been a subject of adjudication earlier before courts have little or no similarity with respect to the language used or the provisions contained therein. While the Government Savings Certificates Act, of 1959, the Banking Regulation Act, of 1949 and the Public Debts Act, of 1944 contain a non-obstante clause, the Insurance Act, of 1939 and the Cooperative Societies Act, of 1912 do not.

43. Similarly, there are variations with respect to the word "vest" being present in

> some legislations (the Employees' Provident Funds and Miscellaneous Provisions Act, 1952) and absent in others (the Insurance Act, 1939, the Cooperative Societies Act, 1912). Looking at the dissimilarities and the fact that a uniform definition is not available relating to the rights of "*nominee*" and/or whether such "*nomination*" bestows absolute ownership over nominees, it is only appropriate that the terms are considered as ordinarily understood by a reasonable person making nominations, with respect to their movable or immovable properties. A reasonable individual arranging for the disposition of his property is expected to undertake any such nomination, bearing in mind the interpretation of the effect of nomination, as given by courts consistently, for several years. The concept of nomination if interpreted by departing from the well-established manner would, in our view, cause major ramifications and create a significant impact on the disposition of properties left behind by deceased nominators.
>
> **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 legislation, that also provide for nomination".
>
> **(Emphasis supplied)**

16. Thus, the Apex Court dealing with the provisions of nomination under various enactments has held that the nomination cannot override the law relating to succession. However, in any of the cases referred to

above, the amended Section 39 of the Act of 1938 came up for discussion.

17. Before interpreting Section 39 as amended by Act 5 of 2015, it is necessary to examine the Objects and Reasons that necessitated the amendment of Section 39 in its present form. The amending Act commences as under:

> *"An Act further to amend the Insurance Act, 1938, and the General Insurance Business (Nationalisation) Act, 1972, and to amend the Insurance Regulatory and Development Authority Act, 1999."*

18. As can be readily noticed, the objects and reasons for amendment are not spelt out at all.

19. Sri J.S. Shetty, the learned counsel appearing for the appellant, has invited the attention of this Court to chapter VII of 190th Report of the Law Commission of India which dealt with nomination. The Law Commission of India, after deliberating on the subject has recommended to amend Section 39. The relevant portion of the discussion in 190th Report of the Law Commission of India (In Chapter VII, NOMINATIONS) reads as under:

NOMINATION

7.1.1. XXX

7.1.2. *Another area, which required clarification, was that of a beneficial nominee as distinguished from a collector nominee. Under S.38 (6) where a nominee survives the insured person, the policy money would be payable to such nominee survivor.* ***The question then arises whether this payment to the nominee is to the exclusion of the legal representatives and heirs*** *or even creditors who may have a legitimate claim against the estate of the deceased of which the money payable on maturity of the life insurance policy forms part****.***

(emphasis supplied)

XXXXXXXX

The Law Commission's views

7.1.12. There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would be tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although this is indeed the law in the USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such an instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. ***On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal***

representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to S.45ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13. The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed has also been welcomed by the responses and is hereby recommended.

Final recommendations of the Law Commission in regard to S.39

7.1.14. After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to S.39 may be summarised as under:

(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.

(b) ***It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.***

(c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

(Emphasis supplied)

Suggested amendment of S. 39

(Section 39 (1) to (6) not extracted as not relevant for discussion)

7.1.15. To give effect to the above recommendations, the Law Commission is of the view that S.39 be recast as follows:

39(1) xxxxxx (6)xxxxx

(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-section (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), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of this Act.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation: For the purposes of this sub-section the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression 'collector nominee' means a nominee other than a beneficiary nominee.

(12) The collector nominee shall make payment the benefits arising out of policy to the beneficiary nominee or his legal heirs or representative in accordance with the regulations made by the Authority.

(13) xxxx.

(14)xxx.

20. As can be noticed, the Law Commission recommended a clear distinction between the **"beneficiary nominee"** and the **"collector nominee"** by explaining the expressions "beneficiary nominee" and the "collector nominee".

21. Though there was a suggestion from insurance companies to give full benefit to the nominee to the exclusion of all, the Law Commission did not accept the suggestion citing socio-economic conditions in India as not suitable to incorporate such practices, found in countries like Canada, USA, or South Africa. The Law Commission noted that in many instances in India, family members are dependent on the sole breadwinner/the policyholder. Therefore, the suggestion to exclude the legal representatives from succession in the event of nomination is not accepted by the Law Commission.

22. However, in the recommendation, (Section 39(11) suggested by the Law Commission) the Law Commission suggested that an option should be given to

the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives or whether the nominee would be the beneficiary nominee.

23. However, the suggestion for providing an option to declare the nature of the nomination, (beneficiary nominee or collector nominee) and in the absence of such declaration, treating the nominee as a beneficiary nominee, is not accepted by the Parliament as the amended provision provides no such option.

24. The amended provision does not incorporate the clause to declare the nature of the nominee (beneficiary or collector) as suggested by the Law Commission. The clause to treat the nominee as the beneficiary nominee in the absence of any declaration by the policy holder as to the nature of nomination, suggested by the Law Commission is also not found in the amended provision.

25. As already noticed, there are multiple instances of various High Courts taking different views on the effect of nomination on the right of an heir under

the personal law governing succession. Finally the Apex Court, interpreting different provisions of different Acts (not amended Section 39 of the Act of 1938) relating to nomination has held that such provisions do not override the personal law relating to succession.

26. It is required to be emphasised that the Apex Court and various Courts, despite the use of the expression ***"vest absolutely"*** or ***"Notwithstanding anything contained in any law for the time being in force"*** and ***"to the exclusion of all"*** in various provisions of law governing nominations have held that such provisions have to be understood in the background of the scheme of the Act in which the provisions relating to nomination are found. The contentions suggesting nomination overriding the provisions of law have been rejected, in various decisions.

27. It is necessary to consider the fields of legislation of the law relating to Insurance and Succession in the Constitutional Scheme. The "Insurance" as a subject is found in Entry No.47 in List-I of Seventh Schedule of the Constitution of India.

"Succession" is found in Entry No.5 in List-III of Seventh schedule. Though, the Union has legislative competence over both the subjects namely, Insurance and Succession, both subjects find place in different Entries. Accordingly, there are different enactments relating to Succession and Insurance which do not overlap the other.

28. It hardly needs to be emphasized that the Act of 1938, was not conceived to provide law relating to Succession over the benefits flowing from the insurance policy. Insurance Act does not deal with issues relating to Succession. The whole object of providing insurance is to cover the risk of the "family of the insured". Treating certain class of nominee/s as exclusive successors to the benefit flowing from the policy, to the exclusion of heirs who are not named in the nomination form will defeat the very purpose of the Act of 1938 which seeks to cover the risk of the family/dependants of the policy holder.

29. There are few more circumstances which suggest that the Parliament did not intend to override the law relating to succession by amending Section 39 of the Act of 1938. Certain recommendations of the Law

Commission noted below are not part of the amended Section 39. Those recommendations which the Parliament did not include are;

a. Section 39 (11) suggested by the Law Commission of India, which provided for a declaration as to whether the nominee is a collector nominee or a beneficiary nominee.

b. Proviso to Section 39 (11) suggested by the Law Commission of India, which provided that in the absence of a declaration as to whether the nominee is a collector nominee or a beneficiary nominee, the nominee is deemed to be a beneficiary nominee.

c. The explanation of the term "Beneficiary Nominee" as provided in the explanation to Section 39(11) suggested by the Law Commission of India.

30. The above noted suggestions of Law Commission of India (which are not found in the amended provision) would indicate that the Law Commission wanted certain class of nominee/s to exclude the heirs under law from claiming rights. And for these

reasons, it wanted a marked distinction to be spelt out in the category of nominees and also a declaration to be made by the policy holder as to whether the nominee is a collector nominee or beneficiary nominee. The Law Commission also suggested an explanation of the term "beneficiary nominee". However the Parliament has not chosen to incorporate the same. These circumstances suggest that the parliament did not want the provision relating to nomination to override the law relating to nomination.

31. Indeed, it is true that the Apex Court in ***Smt. Sarbati Devi*** *supra,* has noted that there is no amendment to Section 39 of the Act of 1938 suggesting a "third mode of succession" and later in 2015, there is an amendment. Going by the tenor of the judgment in ***Smt. Sarbati Devi*** *supra* and the language used in amended Section 39 of the Act of 2015, it is difficult to hold that the 2015 amendment is good enough to recognize a "third mode of succession" other than non-testamentary and testamentary succession provided under the law relating to succession.

32. It is also relevant to note that Section 39(7) includes "parents" as "nominees" entitled to "beneficial interest". In other words "father" of a policyholder who is otherwise a Class-II heir is grouped with Class-I heirs like, wife, mother, and children. To put it differently, Section 39(7) and (8) of the Act of 1938, seem to suggest a different category of succession not provided in personal law, (Hindu Succession Act) but running contrary to personal law. The provision meddling with the law of succession does not fit in the Scheme of the Act of 1938 which occupies a different field in the Seventh Schedule as compared to "Succession" which is found in a different List and Entry. In the light of the discussions made above, it is difficult to hold that the Parliament has enacted a parallel law relating to succession in so far as benefits flowing from the policy of insurance.

33. However, the case cannot be concluded without discussing Sections 39(7) and (8) of the Act of 1938. These two sub-Sections recognize parents, children and spouses of the policyholder as a special category of nominee. Section 39 (7) provides that the above-named

relatives if nominated individually or collectively or in some combination among them, would be entitled to "beneficial interest". What is "beneficial interest" is not defined in the Act.

34. Section 39(8) provides for conferring benefits to the legal representatives of such beneficiary nominee in case the beneficiary nominee dies before the benefits are paid to such nominee. By way of interpretation, it is indeed permissible to take a view that the "beneficiary nominee" excludes all heirs under the law relating to succession. The Andhra Pradesh High Court in ***Karanam Sirisha vs IRDA and others***[3] and ***Mallela Manimala vs Mallela Lakshmi Padmavathi and others***[4] has taken a view that amended Section 39(7) and (8) override provisions of the law relating to non-testamentary succession. Though the ratio in the above-said judgment appears to be correct on a plain reading of Section 39 of the Act of 1938, as amended, on consideration of various aspects discussed above, more

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[3] *2022 SCC Online AP 2772*

[4] *2023 SCC Online AP 459*

particularly the view of the Apex Court in ***Shakti Yezdani's*** case supra, where the provisions of law providing for nominations, which expressly provided to override the law relating to succession, this Court is of the view that Section 39 does not override the provisions of law relating to succession.

35. It is also relevant to note that Section 39(10) of the Act of 1938 provides that the amended provision would apply to all insurance policies maturing after the commencement of the Act of 5 of 2015. In other words, it applies to all policies obtained even before the concept of beneficiary nominee is introduced in the Act. Though, it is possible to change the nomination, given the low awareness of law among the public, the mischief would be, law relating to succession becomes inoperative to certain extent in certain situation if it is held that provision overrides law relating to succession. Such mischief is to be avoided. Heydon’s Rule is well accepted tool that is applied to suppress the mischief and to advance the remedy when the law is capable of dual interpretation.

36. Keeping in mind, the ratio laid down in ***Shakti Yezdani's*** case supra, and the recommendations made by the Law Commission of India, and *partial acceptance* and partial (implied) rejection of the recommendations by the Parliament, and the application of Heydon's Rule for the reasons assigned above, this Court has to conclude that amended Section 39 is not intended to override the provisions of law relating to succession.

37. However, Sections 39(7) and (8) should carry some meaning and cannot be rendered *otiose*. By taking into consideration the recommendations of the Law Commission, the effect of ratio in ***Shakti Yezdani's*** case supra, which has held that the nominee will not acquire a better right than the natural heir, this Court is of the view that the expression "beneficial interest" appearing in Section 39(7) and "beneficial title" appearing in Section 39(8) should be interpreted to say, that such nominee/s or their legal representatives recognised in Sections 39(7) and 39 (8) will get beneficial title over the benefits flowing from the insurance policy, if the testamentary and

non-testamentary heirs do not claim the benefits flowing from the insurance policy. To put it differently, under the unamended provision, the nominee had an obligation to distribute the benefits flowing from the policy to the legal heirs. Under Section 39(7), there is no such obligation as long as there is no claim by the legal heirs. In the absence of any claim by legal heirs, the title vests in beneficiary nominee. However, if there is a claim by the legal heir/s, then the nominee's claim has to yield to the personal law governing succession.

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.

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.

40. One comes across many situations where various Courts express different views interpreting the same law. This happens because of ambiguity or lack of clarity in the language of law. The provision relating to nomination vis-à-vis law relating to succession is one such instance. Conflicting views by various Courts create confusion, lead to multiplicity of litigation, and cause delays in the disposal of cases.

41. Being conscious of the fact that Courts do not have legislative power, a few things are discussed below to invite the attention of the stakeholders to debate/deliberate and to come out with better practices when it comes to enacting or amending a law.

(i) *The Objects and Reasons for enacting or amending a law must contain a clear unambiguous statements as to why the law is introduced, what is the mischief sought to be remedied by way of amendment.*

(ii) Whenever the law is amended, the law must in clear specific terms state as to whether the amendment is prospective or retrospective in its operation. Whether the amendment is prospective or retrospective should not be left to speculation or interpretation by resorting to tools/rules of interpretation by interpreting the terms like "inserted" "amended" "substituted" and the like which are used to amend the

law. Rules of interpretation cannot have a universal application and it will have its own limitation in ascertaining the intention of the legislator.

(iii) Acts like the Indian Contract Act, Transfer of Property Act, Indian Evidence Act etc have plenty of illustrations which explain the law with clarity and precision. Wherever needed, the law should be explained with illustrations which provide clarity to the provision of law. The practice appears to have been completely forgotten, and it is high time that such good practice is revived to bring in much needed clarity in law.

(iv) Whenever different High Courts take a different view in interpreting the law, the law maker should spring into action and clarify the position by way of an amendment and should not wait for the issue to be resolved by the Apex Court as

the process may take a considerably long time. To cite an example, the controversy, whether Section 6 of the Hindu Succession Act, 1956 as amended in 2005, is prospective or retrospective is finally resolved in 2019, 14 years after the amendment. As soon as different High Courts took a different view, an amendment clarifying the position would ensure the timely resolution of many cases.

(v) There should be a conscious endeavor to frame/structure the law in simplest and easy to follow short sentences. The wholly undesirable practice of framing law, with long and complicated sentences is to be discarded at any cost. After all, the law is meant for a common man to understand and follow. The law should never be a riddle or puzzle to be solved by a trained legal mind.

42. Coming to the facts of the case, the appellant who is the mother of late Ravi Somanakatti, the insured, is one of the Class-I heirs, along with widow and minor son of the insured. Since this Court has taken a view that the Section 39 of the Act of 1938 does not override the provisions of Hindu Succession Act, 1956, the appellant who is the nominee described in Section 39 (7) of the Act of 1938 cannot claim absolute ownership over the benefits flowing from the insurance policy as other Class-I heirs of the deceased have also laid a claim over the benefits flowing from the policy.

43. Though the Trial Court has not noticed the amended Section 39 and decreed the suit for partition by referring to un-amended Section 39, this Court is confirming the judgment and decree for the reasons already recorded.

44. Hence, the following:

ORDER

(i) Appeal is ***dismissed***.

(ii) Respondents No.3 and 4 shall deposit the benefits flowing from the insurance policies which are the subject matter of the suit, before the Trial Court, along with interest if any, payable.

(iii) On such deposit being made, the Trial Court shall disburse 1/3rd of the said amount in favour of each of the plaintiffs and 1/3rd in favour of the defendant.

(iii) Since, plaintiff No.2 is a minor, the amount payable to plaintiff No.2 shall be kept in fixed deposit in any nationalised bank till plaintiff No.2 attains majority. Plaintiff No.1-mother is appointed as the natural guardian of plaintiff No.2 during his minority.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GVP/GAB/BRN