

**IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI**

**WRIT PETITION No.5967 of 2024**

**Between:**

1.BETHA MAHALAKSHMI, W/O LATE KONA SRINIVASA KUMAR, AGED ABOUT 53 YEARS OCCUPATION TEACHER, R/O H.NO.171, GANDHINAGAR COLONY, NELLIMARLA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT

**...PETITIONER**

**AND**

1.THE STATE BANK OF INDIA, REP BY ITS BRANCH MANAGER, MAIN BRANCH, PARVATHIPURAM, VIZIANAGARAM DISTRICT, ANDHRA PRADESH  
2.SEEMALA RAMADEVI, W/O LATE BABU SUDARSANARAO, AGED ABOUT 54 YEARS, R/O SUNDARANARAYANAPURAM, BELAGAM, PARVATHIPURAM, VIZIANAGARAM DISTRICT

**...RESPONDENT(S):**

**DATE OF JUDGMENT PRONOUNCED: 03.09.2024**

**SUBMITTED FOR APPROVAL:**

**THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

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|----|---|--------|
| 1. | Whether Reporters of Local Newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters / Journals? | Yes/No |
| 3. | Whether Her Lordship wish to see the fair copy of the Judgment?           | Yes/No |

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**JUSTICE VENKATESWARLU NIMMAGADDA**

**\* HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

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**% 03.09.2024**

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**...RESPONDENT(S):**

! Counsel for Petitioners : Sri N. Bharath Simha Reddy  
^ Counsel for Respondents : Sri Venkata Rama Rao Kota.  
Sri Venkateswarlu Kota

< Gist:

> Head Note:

? Cases referred:

- 1.
- 2.
- 3.

APHC010115362024



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI [3329]  
(Special Original Jurisdiction)**

TUESDAY, THE THIRD DAY OF SEPTEMBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION NO: 5967/2024**

**Between:**

Betha Mahalakshmi

**...PETITIONER**

**AND**

The State Bank Of India and Others

**...RESPONDENT(S)**

**Counsel for the Petitioner:**

1.N BHARATH SIMHA REDDY

**Counsel for the Respondent(S):**

1.VENKATA RAMA RAO KOTA

2.VENKATESWARLU KOLLA

**This Court made the following order:**

This Writ Petition under Article 227 of the Constitution of India is filed for the following relief:

*“to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents 3 to 6 herein in interfering with the life and liberty of the petitioners and thereby harassing them at the*

*instance of 7 to 10 respondents herein and also forcibly taken away the motor bike of the 1<sup>st</sup> petitioner bearing No A P 05EF 3060 and Cell No 9885709429 unauthorized custody in the 4<sup>th</sup> respondent Police Station in view of orders in M P NO 2270/2015 IN DVC 5/2015 Dt 27/1/2016 of XXV Metropolitan Magistrate Kukatapally at Miyapur is illegal arbitrary untenable amounting to interference with civil dispute and violative of Article 14 21 and 300 A of the Constitution of India and consequently direct the respondents 3 to 6 not to harass and interfere with the life and liberty of the petitioners in any manner and handed over the motor bike of the 1<sup>st</sup> petitioner bearing No A P 05EF 3060 and Cell No 9885709429 unauthorized custody in the 4<sup>th</sup> Police Station to the petitioners and pass such...”*

2. The petitioner herein is wife of the deceased and the respondent No.2 is sister of the deceased. The deceased while working as teacher died on 07.03.2020 leaving the petitioner herein and two (02) minor children as class-I legal heirs and respondent No.2 herein and another sister as class-II legal heirs. While so, the deceased opened one savings bank account bearing No.32450965366 with SBI Parvathipuram, Vizianagaram District wherein an amount of Rs.50,000/- is lying as credit amount and the petitioner also deposited an amount of Rs.20,00,000/- as fixed term deposit with the bank vide For bearing Nos.32451110819,

32451116606, 32451117350 and 32451148662 at respondent No.1/bank. After death of the deceased, the petitioner herein being class-I legal heir submitted a representation to the respondent/bank claiming disbursement of amount lying in the deceased bank account. Similarly, respondent No.2 being a class-II legal heir also submitted a representation to the respondent/bank claiming disbursement of amount, since she was nominated as nominee to the fixed deposits. In view of the claim and counter claim by the petitioner and respondent No.2, the respondent No.1/bank neither disbursed the amount nor disposed of their representations by passing any speaking order and requested to get succession certificate through Court of law. Having no other option, the petitioner herein along with her two (02) minor children filed SOP No.5 of 2020, on the file of learned Senior Civil Judge, Parvathipuram, seeking right of succession being class-I legal heirs in respect of the deceased wherein the respondent Nos.1 and 2 herein were made as party respondents to the said SOP. Similarly, respondent No.2 also invoked jurisdiction of the Court of law and filed OS No.4 of 2021 on the file of learned II Additional District Court, Parvatipuram seeking declaration of title in respect of properties bequeathed by the deceased, wherein the petitioner

herein is defendant to the said suit. After considering the facts and circumstances of the case, the Court below passed order dated 17.11.2021 granting succession in favour of the petitioner by holding as under:

**SUCCESSION CERTIFICATE**

*Whereas the petitioners applied on 21<sup>st</sup> day of October, 2020, by invoking Sec.372 of Indian Succession Act, praying the court to issue Succession Certificate in their favour, in respect of the schedule mentioned amounts lying with State Bank of India, Main Branch, parvatipuram, relating to the deceased Kona late Srinivasa Kumar, S/o. Late Sitaramamurthy.*

**SCHEDULE**

*An amount of Rs.50,000/- in SB A/c.32450965366; and an amount of Rs.20,00,000/- in fixed deposits (totaling to Rs.20,50,000/-) lying with State Bank of India, Main Branch, Parvatipuram.*

*The petition is allowed directing the office to issue Succession Certificate in favour of the petitioners, in order to receive the amounts mentioned annexure i.e., Rs.50,000/- lying in SB Account No.32450965366 and Rs.20,00,000/- lying in fixed deposit with State Bank of India, Main Branch, Main Road, Parvathipuram, and the 1<sup>st</sup> petitioner is permitted to receive those amounts on her behalf and on behalf of her minor children., viz., petitioners 2 and 3 herein, after completion of legal formalities.”*

3. Learned counsel for the petitioner would submit that in view of issuance of succession certificate, the petitioner is entitled to receive the schedule amounts as per the order of the Court below dated 17.11.2021. He further submits that even though the Court below issued succession certificate in favour of the petitioner, so far respondent No.1 for the reasons best known to it neither disbursed amounts nor challenged the order of the Court below dated 17.11.2021 which become final. He further submits that once competent Court passed an order granting succession certificate in favour of the petitioner, the respondent No.1 has no other option except to disburse the said amounts in favour of the petitioner. Therefore, respondent No.1 shall be directed to disburse amount in favour of the petitioner in view of the succession certificate granted by the Court below.

4. On the other hand, learned Standing Counsel for respondent No.1/bank filed counter affidavit wherein it is stated as under:

*“ 3. I submit that in reply to Para Nos.1 to 3 of the Affidavit filed in support of the Writ Petition, averments made in these paragraphs are born on record, there is no dispute about the Petitioner's husband opened 4 Special Term Deposit Receipts(STDRs) and SB Account vide*

*Account No: 32450965366 in our Branch. As per record total amount in both STDRs and Saving Bank Account is Rs.21.84 lacs. I submit that while opening STDRs and Saving Bank, Petitioner's Husband Shri Kona Srinivasa Kumar made Nomination in favour of K.Rama Devi, i.e Respondent No.2 herein above, who is sister of Kona Srinivasa Kumar.*

*4. I submit that after death of Shri Kona Srinivasa Kumar Petitioner approached us for release of the above stated amount, having verified records, we have not processed her request since Shri Kona Srinivasa Kumar made Nomination and as per Section 45ZA(2) of the Banking Regulation Act, 1949, which reads as" 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 of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may, on the death of all 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." At this juncture, Petitioner filed S.O.P No.5 of 2020 on the file of Hon'ble Senior Civil Judge Court, Vizianagaram against the Bank and Respondent No.2, who is the Nominee as per the Bank records."*

5. Learned counsel for respondent No.2 also filed counter affidavit wherein it is stated as under:

*“3. I submit that I am sister of deceased Srinivasa Kumar, who is husband of petitioner. Petitioner deserted her husband long back and did not see his face even he was hospitalized inspite of information and requests made by me and my sister number of times. I and my sister looked after his welfare during that period. Vexed with attitude of petitioner, deceased Srinivasa Kumar executed a registered will Dt. 2-3-2010 bequeathing some properties to me and my sister and some properties to his daughter and son. As per the will I am entitled to all movable properties and valuable securities. Besides that in respect of the Special Term Deposits made by deceased Srinivasa Kumar I was nominated as nominee. It was not varied or cancelled during his life time. So I am entitled to the amount kept in deposits mentioned supra.*

*4. I further submit that based will executed by my deceased brother Srinvas Kumar I and my sister filed O.S. No. 4/2021 on the file of II Addl. District Court, Parvatipuram seeking declaration of our title to the properties bequeathed to us. Petitioner is party to the said suit. In the said suit genuineness or otherwise of the will executed by my deceased brother Srinvas Kumar is in issue. It will decide the right of petitioner to claim amount under deposits with 1st respondent.”*

6. Learned Standing Counsel for respondent No.1/bank reiterated that the submissions made in the counter affidavit by stating that since IA No.319 of 2022 for setting aside the ex parte order of the Court below dated 17.11.2021 filed by the respondent No.2 is pending for consideration; as such, this respondent is unable to disburse the amount in pursuance of the order dated 17.11.2021 of the Court below in SOP No.5 of 2020. He further submits that respondent No.1 is ready to discharge its duties as per the orders of this Court.

7. Learned counsel for respondent No.2 submits that since the petitioner abandoned the deceased long back, respondent No.2 and her sister look after the welfare of the deceased which is evident not only from the proceedings i.e., registered Will dated 02.03.2010 which was executed by the deceased in favour of the respondent No.2 herein and also she made as nominee in respect of the fixed deposits as per Section 45ZA of the Banking Regulation Act, 1949. He further asserts that the respondent No.1 is under statutory obligation to disburse amounts in favour of the nominee which excludes all the types legal heirs of the deceased. But for one reason or the other, the respondent No.1/bank dodged the disbursement in favour of this respondent contrary to the object of

under Section 45ZA the Banking Regulation Act, 1949. He further contends that the said succession certificate granted in favour of the petitioner is an ex parte order, wherein the respondent No.2 herein filed IA No.319 of 2022 seeking to set aside the ex parte order. Even though it was filed in the year 2022, the Court below has not decided it so far. Therefore, it cannot be said that an ex-parte order dated 17.11.2021 passed by the Court below in SOP No.5 of 2020 has become final. As such, the petitioner herein is not entitled for any relief as prayed in the Writ Petition and the Writ Petition is liable to be dismissed.

8. Heard learned counsel for the petitioner, learned Standing Counsel for respondent No.1/bank and learned counsel for respondent No.2. Perused the entire material available on record.

9. The fact remains is that the petitioner herein is the wife of the deceased and they were blessed with two (02) minor children namely K.Jahnavi and K.Sai Vishnu Chaitanya all of them were classified as class-I legal heirs of the deceased as per Section 10 of the Hindu Succession Act. Admittedly, respondent No.2 herein is the sister of the deceased as such she is the class-II legal heir of the deceased. It appears that the respondent No.2 was made as nominee in respect of fixed deposits, but in view of the claim and

counter claim by class-I legal heirs i.e., petitioner herein both the parties were directed to obtain succession certificate for disbursement of amounts. Pursuant to the direction by the respondent No.1/Bank, they filed S.O.P. on the file of learned Senior Judge, Vijayawada wherein the petitioner and her two children were granted succession certificate by the Court below on 17.11.2021. Even after receipt of the "Succession Certificate" by the Bank which was issued in favour of the petitioner and two others for disbursement of amount as envisaged, being party respondent to the SOP. Even after lapse of three (03) years, respondent No.1/bank did not disburse the amounts in favour of the petitioner and two children, the said inaction of respondent No.1 is contrary to the Banking Regulation Act, 1949, arbitrary, highhanded in nature and in violation of the order of the Court below which is invited by itself. It is further observed that respondent No.1 even after receipt of the order of the Court below dated 17.11.2021, on the guise of a petition for setting aside of the ex parte order filed by respondent No.2 is pending and sitting over the matter even after lapse of three years, without disbursing the deposit amounts is nothing but dereliction of statutory duties and infringing the fundamental rights guaranteed under Article 14 and 21 of the Constitution of India on

the part of respondent No.1. It is settled proposition of law that, due to sudden death of the bread-winner of the family, the entire family will be put in harness and struggling for their livelihood, therefore the bereaved family should be addressed with immediate effect. Therefore, it is recognized the right of livelihood is a Human Right as guaranteed under Article 21 of the Constitution of India. Therefore, the legal heirs are entitled for immediate financial assistance to come out of their harness and to meet their livelihood. Contrary in the present case, even though the son and daughter of the deceased being minors and pursuing their school education, being a statutory public authority, the respondent No.1 sit over the matter years together without disbursing the amounts, even though they are entitled as per the order of the Court below dated 17.11.2021 which is in violation of Article 21 of the Constitution of India apart from violation of the order of Court below and caused an action of "Red-Tapism" and against the Human Right. The learned counsel for respondent No.2 also found fault with the action of the respondent No.1 which did not adhere in accordance with Section 45ZA(2) of the Banking Regulation Act, 1949.

10. For better understanding, Section 45ZA(2) of the Banking Regulation Act, 1949 is extracted hereunder:

*“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 in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of sole depositor or, as the case may, on the death of all depositors, become entitled to all the right of sole depositor or, as the case may be, of the depositors, unless the nomination is carried or cancelled in the prescribed manner.”*

11. The contention of learned counsel for respondent No.2 that according to Section 45ZA(2) of the Banking Regulation Act, 1949 respondent No.2 being a nominee is entitled to receive the deposited amounts is valid and sustainable but it cannot be accepted in toto for the reason if succession was granted in view of the judgment of this Court in W.P.No.5519 of 2024 dated 07.05.2024 and in view of the judgment of High Court of Madras in A.No.2468 of 2020 in OP No.953 of 2018 dated 11.12.2020. Moreover, it is a settled proposition of law, even though this amounts received by the nominee the same should be distributed among Class-I legal heirs.

12. This Court by its judgment dated 07.05.2024 in W.P.No.5519 of 2024 held as under:

*“9. In view of the above said facts and circumstances, it is to be seen that the above said objectors have not thereafter approached the authorities concerned with any orders in favour of them to make a claim for the said amount of the deceased/Katabathina Janardhan lying with the respondent No.4. Whereas, the petitioner approached with the above said documents stating that there is a Succession Certificate in favour of the petitioner. It appears that the objectors who are said to be claiming the amount of the deceased/Katabathina Janardhan have not even taken the necessary steps seeking to set aside the above said Succession Certificate. There are no contrary orders passed by the competent authorities in favour of the above said objectors and also they have not filed any objection petition or implead application in this Court. In view of the same, there is no reason to withhold the payments under the above said Succession Certificate in favour of the petitioner by the respondent Nos.2 to 4.*

*10. For the foregoing reasons, the respondent Nos.2 to 4 are directed to release the amount as per the Succession Certificate to the petitioner and by taking necessary undertaking from the petitioner, the same can be released as expeditiously as possible preferably within a period of one(01) month from the date of receipt of this order.”*

13. The High Court of Madras in the case of Vidyaa Hari Iyer Vs. Sundaram Finance Limited & Ors in A.No.2468 of 2020 in OP No.953 of 2018 dated 11.12.2020 held as under:

*“ 2. The contention of the applicant is that after the death of her husband, the first respondent failed to release the deposit made by her husband on the ground that the second respondent was the nominee, The applicant has filed an Original Petition in O.P. No. 953 of 2018 for issuance of Succession Certificate. The Court by an Order dated 26.12.2019 issued the Succession Certificate. Despite the certificate produced, the first respondent did not release the amount. It is further alleged by the applicant in the application that her husband had made various fixed deposits. After the death of her husband, she was driven out of her matrimonial home. Her in-laws and other nephews and nieces tried to usurp the entire amount. Hence, this application has been filed to seeking direction to release the deposit amount held by her husband.*

*3. It is the contention of the first respondent that the second respondent is the nominee, has objected for release of the amount. They have filed an interpleader suit before the City Civil Court for decision.*

.....

*17. As far as Section 45ZA of the Banking Regulation Act is concerned, the above section indicate that the amount shall be paid to the nominee. It is also to be noted*

*that Section 45ZD makes it clear that when there is an Order or a certificate or other authority from a Court obtained relating to such article is produced before the bank, the bank shall take due note of such decree, Order, certificate or other authority. Therefore, it cannot be said that even after the succession certificate is granted by the competent Court is produced before the bank, they cannot ignore the same merely on the basis of Section 45ZA of the Banking Regulations Act. Even though 45ZA contained non obstante clause, the Apex Court in Vishin N. Khanchandani Vs. Vidya Lachamandas Khanchandani reported in 2000 (6) SCC 724 in para 11 has categorically held that though the overriding effect of non obstante clause to attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made have to kept in mind, as the nominee has to be treated as a trustee and he is entitled to receive the amount only and he has to pay the amount to the persons who are entitled under law of succession. Therefore, when the succession certificate already granted, the object of the Indian Succession Act has to be given importance. Accordingly, the contention that only the nominee alone as per section 45ZA of the Banking Regulations Act is entitled to receive the money even after succession certificate is granted, cannot be countenanced Therefore, merely because a suit has been filed at a later point of time at the instance of the nominee, despite the succession certificate has*

*been produced, the same has no relevance to decide this application. If at all the second respondent in the event of succeeding in the suit in O.S. No. 5683 of 2019, to realise the amount, this Court is of the view that some security has to be offered by the applicant herein. The learned counsel for the applicant Mr. Mohan submitted that in C.S. No. 899 of 2017 already 1/4th share of the applicant has been declared and preliminary decree is already passed and charge may be created in respect of the above 1/4th share of the applicant towards the deposit amount till the interpleader suit is decided.”*

14. In view of the reasons stated above and in view of the ratio laid down by this Court as well as High Court of Madras, the petitioner herein is entitled to receive the amounts lying in deceased bank accounts, by way of fixed deposits being a successor of the deceased.

15. Accordingly, the Writ petition is allowed directing the respondent No.1/Bank to release the entire deposited amounts of deceased along with interest accrued thereon in favour of the petitioner herein within a period of two (02) weeks from the date of receipt of copy of the order. It is further directed that there shall be an apportionment out of the disbursed amounts between all the class-I legal heirs as per Succession Certificate. Further all the legal heirs

including two (02) minor children are entitled  $1/3^{\text{rd}}$  each out of total amount. As far as two (02) minors are concerned, the petitioner shall deposit  $1/3^{\text{rd}}$  share of disbursed amount each in their respective bank accounts till they attain majority. Further, the petitioner being a natural guardian entitled to withdraw the deposited amounts, for the purpose of emergency necessities in respect of her two (02) minor children. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

**VENKATESWARLU NIMMAGADDA, J**

03.09.2024  
PSA

**THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION No.5967 of 2024**

03.09.2024

**Note:** LR copy to be marked.

B/o.

PSA