

INDRANI WAHI

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v.

REGISTRAR OF COOP. SOCIETIES & ORS.

(Civil Appeal No. 4646 of 2006)

MARCH 10, 2016

[JAGDISH SINGH KHEHAR AND C. NAGAPPAN, JJ.]

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West Bengal Co-operative Societies Act, 1983 – ss. 79 and 80 r/w rr. 127 and 128 of the West Bengal Co-operative Societies Rules, 1987 – Nomination u/s 79 – By a member of a co-operative society – In favour of his married daughter – After the death of the original member, the membership transferred in the name of the daughter – Objection to the transfer by the son and wife of the original member – Deputy Registrar of Co-operative Societies declined to transfer the membership in favour of the daughter (nominee) on the ground that she being married did not fall within definition of the term ‘family’ as contemplated u/s 79 r/w r.127 – Writ petition by the nominee – Allowed by the Single Judge of High Court – Division Bench of the High Court held that the son and wife of the original member, being the inheritors, their interest in the property should be protected – On appeal, held: In case of a valid nomination u/s.79, the Co-operative Society is liable to transfer the share or interest of a member in the name of the nominee – That would have no relevance to the issue of title between the inheritors or successors to the property of the deceased member – The Co-operative Society is directed to transfer the interest of the deceased member, in favour of the nominee – However, it will be open to the inheritors to pursue their case of succession /inheritance.

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Allowing Civil Appeal No. 4646/2006 and disposing of Civil Appeal No. 4930/2006, the Court

HELD: 1. As per s.79 of West Bengal Co-operative Societies Act, 1983, where a member of a co-operative society nominates a person in consonance with the provisions of the West Bengal Co-operative Societies Rules, on the death of such member, the co-operative society is mandated to transfer all the share or interest of such member in the name of the nominee. The above interpretation of Section 79 also emerges from Section 80(1)(a) which postulates, that the share or interest of a member of the

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A society, “on his death” shall be transferred to a person “nominated under Section 79”. The rights of others on account of an inheritance or succession is a subservient right. Only if a member had not exercised the right of nomination under Section 79, then and then alone, the existing share or interest of the member would devolve by way of succession or inheritance. The heading of Section 80 - “Disposal of deceased member’s share of interest” lends further credence to the above interpretation. Rule 127 of the 1987 Rules also provides, that if a nomination has been made by a member under Section 79, the share or interest or the value of such share or interest standing in the name of the deceased member, would be transferred to the nominee. Rule 128 of the 1987 Rules further leads to the same inference. Inasmuch as Rule 128 provides, that only in the absence of a nominee, the transfer of the share or interest of the erstwhile member, would be made on the basis of a claim supported by an order of probate, a letter of administration or a succession certificate (issued by a Court of competent jurisdiction). Thus, in case of a valid nomination under Section 79 of the 1983 Act, ‘the Co-operative Society’ is liable to transfer the share or interest of a member in the name of the nominee. [Paras 15, 17-19] [322-D-F; 324-C, F, G]

2. Transfer of share or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the concerned Co-operative Society, and is binding on the said society. The Co-operative Society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased. The Co-operative Society’ is directed to transfer the share or interest of the society in favour of the appellant. It shall however, be open to the other members of the family to pursue case of succession or inheritance, if so advised, in consonance with law. [Para 20] [324-H; 325-A-C]

Usha Ranjan Bhattacharjee v. Abinash Chandra Chakraborty, (1997) 10 SCC 344, *Smt. Sarbati Devi v. Smt. Usha Devi* 1984 (1) SCR 992 : (1984) 1 SCC 424

and *Gayatri De v. Mousumi Cooperative Housing Society Limited* 2004 (1) Suppl. SCR 56 : (2004) 5 SCC 90 – distinguished. A

Case Law Reference

(1997) 10 SCC 344 distinguished Para 11 B
1984 (1) SCR 992 distinguished Para 11
2004 (1) Suppl. SCR 56 distinguished Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4646 of 2006.

From the Judgment and Order dated 07.10.2004 of the High Court of Judicature at Calcutta in F.M.A. No. 356 of 2004 C

WITH

C. A. No. 4930 of 2006.

R. P. Gupta, Mehul M. Gupta, Ranjan Mukherjee, Dr. Kailash Chand, Gaurav Agarwal, Abhinav D. Rao, Soumitra G. Chaudhuri, Parijat Sinha, Anip Sachthey Advs. for the appearing parties. D

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J.

Civil Appeal No. 4646 of 2006

1. Biswa Ranjan Sengupta (hereinafter referred to as ‘the appellants father’), was admitted as a member of the Sarbar View Cooperative Housing Society Limited (hereinafter referred to as ‘the Cooperative Society’), against Flat No.4-RB 2/3, Purbachal Housing Estate, Phase-II, Sector-III, Salt Lake City, Kolkatta. He (Biswa Ranjan Sengupta) had married Parul Sengupta. Out of the above wedlock, there were two children – a daughter (Indrani Wahi) and a son (Dhruba Jyoti Sengupta). It is not a matter of dispute, that his (Biswa Ranjan Sengupta’s) membership of ‘the Cooperative Society’ had resulted, in the allotment of the flat referred to hereinabove. Biswa Ranjan Sengupta recorded the name of the appellants – Indrani Wahi, in terms of the mandate contained in Section 79 of the West Bengal Cooperative Societies Act, 1983 (hereinafter referred to as ‘the 1983 Act’). Under Section 79, a member of ‘the Cooperative Society’ is required to nominate a person in whose favour ‘the Cooperative Society’ would dispose of the share or interest of the member “on his death”. E
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A 2. It is the case of the appellant before this Court, that her father
- Biswa Ranjan Sengupta, lived under her exclusive care ever since March
2002, whereafter he died on 22.07.2003. It is also the case of the
appellant, that neither the appellant's mother nor her brother participated
B in the last rites of her father - Biswa Ranjan Sengupta. In our considered
view, these facts are irrelevant for the adjudication of the present
controversy. They are, however, being recorded herein, on account of
the significance assigned to them, in the pleadings, and also during the
course of hearing.

C 3. After the death of her father - Biswa Ranjan Sengupta, Indrani
Wahi addressed a communication dated 05.08.2003 to the Secretary of
'the Cooperative Society', for entering her name in place of the name of
her father, with reference to Flat No.4-RB 2/3, Purbachal Housing Estate,
Phase-II, Sector-III, Salt Lake City, Kolkatta. The Managing Committee
of the Housing Society passed a unanimous resolution on 15.08.2003,
D for transferring the membership of Biswa Ranjan Sengupta in 'the
Cooperative Society' to the name of the appellant – Indrani Wahi.

E 4. It is the case of the appellant, that consequent upon the passing
of the above resolution, she (Indrani Wahi) has been paying maintenance
and other charges to the Society. It is also pointed out, that the Secretary
of 'the Cooperative Society', through a covering letter dated 16.08.2003,
sent all papers with reference to the transfer of the membership of 'the
Cooperative Society' from the name of Biswa Ranjan Sengupta, to the
name of Indrani Wahi, to the Deputy Registrar, Cooperative Societies.
The papers dispatched, included the resolution of 'the Cooperative
Society' referred to above.

F 5. On 01.09.2003, having got wind of the transfer of the
membership of 'the Cooperative Society' from the name of his father -
Biswa Ranjan Sengupta, to the name of his sister – Indrani Wahi, Dhruva
Jyoti Sengupta addressed the letter to the Deputy Registrar, Cooperative
Societies on behalf of his mother – Parul Sengupta. In the above letter,
he (Dhruva Jyoti Sengupta) asserted, that the membership to the flat
G should be transferred to the name of his mother – Parul Sengupta. In
response to the letter dated 01.09.2003, the Deputy Registrar, Cooperative
Societies, by an order dated 19.09.2003, required the parties to submit
documents to demonstrate, that the deceased had a family. The Secretary
of 'the Cooperative Society' informed Parul Sengupta, that the name of
H Indrani Wahi had been recorded as a nominee of Biswa Ranjan Sengupta,

in the records of 'the Cooperative Society', and if Parul Sengupta desired to verify the same, it was open to her to inspect the records. A

6. In response to the letter dated 19.09.2003, the Secretary of 'the Cooperative Society' submitted the following information to the Deputy Registrar, Cooperative Societies through a communication dated 26.09.2003: B

"(1) Late B.R. Sengupta had a family consisting of wife, son and daughter-in-law. They all daireded (sic derided) him and he was living with his daughter Mrs. Indrani Wahi, where he eventually died. A copy of his 'Will' is enclosed 'which will speak itself'. We reiterate our views that his daughter in the "legal nominee". C

(2) Salary Certificate dated 22.9.03 of Mrs. Indrani Wahi is attached.

(3) In the State of U.P., there is no law regarding profession tax which has been certified in the Salary Certificate itself.

(4) The provision of Registration Act, 1908 will not apply in this case, since the property was already registered under the Act in the name of Late Sengupta, copies of which are enclosed for your perusal. D

Kindly arrange for necessary approval."

(Emphasis is ours) E

7. Yet again, Dhruba Jyoti Sengupta sent a letter on behalf of his mother, to the Secretary of the Society dated 29.09.2003 again with reference to the flat in question. He reiterated his previous assertion, that the flat be transferred to the name of Parul Sengupta. In response to the above communication, the Secretary of 'the Cooperative Society' again informed Parul Sengupta, through a letter dated 16.10.2003, that the name of Indrani Wahi was recorded by Biswa Ranjan Sengupta as his nominee, with reference to the flat in question. F

8. A further twist was added to the sequence of events, when Dhruba Jyoti Sengupta addressed another letter dated 20.10.2003 to the Deputy Registrar, Cooperative Societies, informing him, that Biswa Ranjan Sengupta had not nominated Indrani Wahi, but had actually nominated Parul Sengupta (in terms of the nomination stipulated under Section 79 of the 1983 Act). It is in the aforesaid view of the matter, that the Deputy Registrar, Cooperative Societies declined to record the name G

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A of Indrani Wahi, as the successor of the flat originally allotted to Biswa Ranjan Sengupta. The instant determination was referred to in an order dated 11.11.2003. A relevant extract of the same is reproduced hereunder:

B “With reference to his letter above, this is to inform him that as Late Sengupta had family of his own, the nomination made by late Sengupta in favour of Smt. Wahi can’t be accepted, as it was not done in terms of section 79 of W.B.C.S. Act read with Rule 127 of the W.B.C.S. Rules, 1987.

C Hence letter of administration/ succession certificate is required in favour of Smt. Wahi in terms of Rules 128 of W.B.C.S. Rules, 1987.”

(Emphasis is ours)

D It is apparent, that through the aforesaid communication, the transfer of the flat in the name of the appellant was declined on the ground, that the appellant being a married daughter did not fall within the definition of term ‘family’ as contemplated under Section 79 of the 1983 Act [read with Rule 127 of the West Bengal Co-operative Societies Rules, 1987 (hereinafter referred to as ‘the 1987 Rules’). And that, being a married daughter, Indrani Wahi was not a member of the family of Biswa Ranjan Sengupta.

E 9. It would also be relevant to mention, that the aforesaid communication dated 11.11.2003, did not deal with the issue of succession of interest of the above flat, after the death of Biswa Ranjan Sengupta. A copy of the aforesaid communication dated 11.11.2003 was sent to the appellant – Indrani Wahi, by the Secretary of ‘the Cooperative Society’ through a forwarding letter dated 13.11.2003.

F 10. Aggrieved with the decision taken by the authorities, in rejecting the appellant’s claim with reference to the transfer of the flat under reference, the appellant assailed the order of the Deputy Registrar, Cooperative Societies dated 11.11.2003, and that of the Secretary of ‘the Cooperative Society’ dated 13.11.2003, by preferring Writ Petition No.33(W) of 2004, before the High Court of Judicature at Calcutta (hereinafter referred to as ‘the High Court’). The aforesaid writ petition came to be allowed by a learned Single Judge of the High Court, vide an order dated 24.03.2004. In recording its conclusion, the High Court, inter alia, held that the Deputy Registrar of the Cooperative Societies was not justified to exclude the appellant being a daughter of the original member

– Biswa Ranjan Sengupta from the purview of the provisions of the 1983 Act, and the 1987 Rules framed thereunder. In fact, the High Court, in its conclusions, expressly recorded, that Rule 127 of the 1987 Rules include major sons and daughters as members of the family, in addition to minor sons and daughters, without any clarification as to their marital status. The High Court accordingly held, that the married daughters were not excluded from the purview of Rule 127 of the 1987 Rules. Having so concluded, the learned Single Judge of the High Court, directed the Registrar of the Cooperative Societies to grant the necessary approval for transfer of the membership in the name of Indrani Wahi, as nominee of Biswa Ranjan Sengupta.

11. The mother of the appellant – Parul Sengupta, and her brother – Dhruva Jytoi Sengupta, being aggrieved of the order passed by the learned Single Judge dated 24.03.2004, assailed the same, by preferring F.M.A.No.356 of 2004. Vide the impugned order dated 07.10.2004, a Division Bench of the High Court, relying upon the judgment rendered by this Court in Usha Ranjan Bhattacharjee vs. Abinash Chandra Chakraborty, (1997) 10 SCC 344, Smt. Sarbati Devi vs. Smt. Usha Devi, (1984) 1 SCC 424 and Gayatri De vs. Mousumi Cooperative Housing Society Limited, (2004) 5 SCC 90, *inter alia*, concluded :

“We do not propose to hold that the writ petitioner, in whose favour nomination has been made, shall not be made a member of the said society and having regard to the legislature intent contained in sub-section (4) of Section 69 it may not be possible for us to direct the appellants to be joint members along with the writ petitioner, but to protect the interest of the appellants in the flat which they have inherited, it is necessary for the said Society to record their interest expressly in the share Certificate as well as in its records pertaining to members and, in particular in the register of members so that one of the joint owners merely because of the nomination in her favour cannot transfer either the share, in which she has a part interest, or the allotment, where also she has a part interest, for the same is expressly declared to be transferable and, accordingly, can only be transferred by expressing consent of all the heirs.

With the above we dispose of the appeal without, however, any order as to costs.”

- A Dissatisfied with the aforesaid determination of the High Court, Indrani Wahi has approached this Court by filing the present appeal.

12. Before dealing with the controversy in hand, it is imperative for us to refer to the judgments relied upon by the Division Bench in recording its conclusion. Reference may first be made to the Usha Ranjan Bhattacharjee case (supra), wherein this Court dealt with Sections 69 and 70 of the West Bengal Co-operative Societies Act, 1973 (hereinafter referred to as 'the 1973 Act'). Sections 69 and 70 of the 1973 Act came up for interpretation at the hands of this Court in the above-mentioned judgment. Sections 69 and 70 aforementioned are extracted hereunder:

- C "69. If the by-laws of a co-operative society so permit, any, member of the society may, in accordance with the rules, nominate a person in whose favour the society shall dispose of the share or interest of such member on his death.

- D 70. (1) When any member of a co-operative society dies, his share and interest in the society shall, subject to the provisions of sections 50 and 68 and to the further provisions of this section, be transferred -

(a) to the person, if any, nominated in accordance with the provisions of section 69; or

- E (b) if there be no such nominee or, if the existence and residence of such nominee cannot be ascertained by the managing committee, or if for any other cause such transfer cannot be made without unreasonable delay, to the person who (subject to the production by him of probate, letters of administration or succession certificate) appears to the managing committee to be entitled, in accordance with the rules, to possession of such share or interest as part of the estate of the deceased member; or

- F (c) on the application of the person referred to in clause (b) within three months of the death of the deceased member, to any person specified in the application.

- G (2) If the share or interest of the deceased cannot be legally transferred in accordance with the provisions of sub-section (1), or if the person, to whom the share or interest is payable under that sub-section within one year of the death of the deceased

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member, claims payment of the value of such share or interest, or if the society in accordance with the rules and by-laws decides to proceed according to this sub-section - - A

(a) the share shall be transferred to some other person qualified in accordance with the provisions of section 68 to be the transferee of the share, on receipt from such person of the value thereof; and B

(b) the value of the share or interest of the deceased member, determined in accordance with the rules, shall be paid to the person nominated in accordance with the provisions of section 69 or to the person appearing to be entitled to possession of such share or interest as aforesaid, after deducting the amount of any sum payable under this Act to the society from the estate of the deceased member.” C

The factual position that arose for consideration has been recorded in paragraph 3 of the above judgment, and the reasons for not accepting the determination rendered by the High Court, as also, the proposition canvassed at the hands of the learned counsel appearing for the appellant were dealt with in paragraphs 3 to 6 of the Usha Ranjan Bhattacharjee case (supra). The same are being extracted below: D

“3. The dispute arose when the Cooperative Society wanted to hand over the possession of the said flat to Shri Chakraborty because the appellants were found in physical possession of the said flat. The case of the appellants was that since Shri Ranendra Kumar Acharya died intestate, they had inherited the said property of Ranendra Kumar Acharya according to the rules of intestate succession under the Hindu Succession Act. The respondent, however, contended that as nomination was made in his favour, the Cooperative Society was under a duty to hand over the possession of the said flat in favour of the respondent. Such dispute ultimately was raised before the Cooperative Tribunal. The Cooperative Tribunal held that there had been a valid nomination in favour of the respondent by the deceased Shri Ranendra Kumar Acharya but the Tribunal held that the question of title to the property was to be adjudicated by an appropriate forum if the parties would approach such forum. Since no direction for handing over the possession of the flat in favour of Shri Abinash Chandra E F G

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A Chakraborty was given, a writ petition was filed before the High Court against the decision of the Cooperative Tribunal. The learned Single Judge disposed of such Writ Petition being CO No. 766 of 1987. The learned Single Judge directed the Cooperative Society to hand over the possession of the said flat in favour of the said
B Abinash Chandra Chakraborty under Section 70 of the Cooperative Societies Act, 1973. The learned Judge also made observation about the effect of such nomination under the said Act by indicating that in view of such nomination, the party in whose favour valid nomination had been made under Section 69 of the said Act must be held to have acquired title to the property.
C Such decision of the learned Single Judge was challenged before the Division Bench of the High Court in appeal. By the impugned judgment, the Division Bench has dismissed the appeal and has upheld the decision of the learned Single Judge.

D 4. In our view, Mr. Amal Ganguli, learned Senior Counsel appearing for the appellants, has rightly contended that within the limited scope of Section 69 and 70 of the West Bengal Cooperative Societies Act, 1973, the Cooperative Tribunal was not required to determine the disputed question of title between the parties in dispute and the High Court had also gone wrong in holding that when a valid nomination is made, the nominee acquires title to the property in question.
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F 5. Dr. Shanker Ghosh, learned Senior Counsel appearing for the respondent has, however, submitted that the West Bengal Cooperative Societies Act, 1973 is a complete code by itself and since the said Act is applicable notwithstanding anything contained in any other Act, if a rival claim of title to the property is raised, the Cooperative Tribunal is not incompetent to decide such title.

G 6. We are, however, not inclined to accept such contention of Dr. Ghosh. In our view, within the limited scope of inquiry to be made for determining the question of valid nomination under Section 69, title to the property cannot be determined. In terms of determination of valid nomination the consequential direction for delivery of possession can be given in favour of the person having valid nomination under the provisions of Section 70 of the Cooperative Societies Act. The dispute as to the question of title is not to be decided within the limited scope and ambit of Sections 69 and 70 of
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the cooperative Societies Act. We, therefore, dispose of this appeal by directing that in view of the finding by the Tribunal that the respondent had obtained a valid nomination from the deceased Ranendra Kumar Acharya, the respondent is entitled to get the possession of the said flat in accordance with the provisions of Section 70 of the Cooperative Societies Act. But the dispute as to the title of the said flat should not be held to have been decided either by the Cooperative Tribunal or by the High Court by the impugned judgment. Such question is kept open to be decided by an appropriate forum if such challenge is made before the appropriate forum. This appeal is accordingly disposed of without any order as to costs."

(Emphasis is ours)

There can be no doubt about the fact, that in the above cited case, a Division Bench of this Court had arrived at the conclusion, that the High Court erred while concluding, that the holding of a valid nomination could *ipso facto* result in the transfer of title in favour of the nominee. Despite recording the above conclusion, this Court ultimately held, that consequent upon a valid nomination having been made under Section 69, the nominee would be entitled to possession, and further, that the issue of title had to be left to be adjudicated upon between the contesting parties.

13. We shall now deal with the judgment in the Smt. Sarbati Devi case (supra). The issue which came up for adjudication in the above judgment related to the interpretation of Section 39 of the Life Insurance Act, 1938. The rights of a nominee of a policy holder, were adjudicated upon in the above judgment. Paragraphs 4, 5 and 12 of the judgment record the conclusions of this Court, with reference to the rights of a nominee of a policy holder. The aforesaid paragraphs are extracted herein below:

"4. At the outset it should be mentioned that except the decision of the Allahabad High Court in Kesari Devi v. Dharma Devi AIR 1962 All 355 on which reliance was placed by the High Court in dismissing the appeal before it and the two decisions of the Delhi High Court in S. Fauza Singh v. Kuldip Singh AIR 1978 Del 276 and Uma Sehgal v. Dwarka Dass Sehgal AIR 1982 Del 36 in all other decisions cited before us the view taken is that the nominee under Section 39 of the Act is nothing more than an agent to receive

A the money due under a life insurance policy in the circumstances
similar to those in the present case and that the money remains
the property of the assured during his lifetime and on his death
forms part of his estate subject to the law of succession applicable
to him. The cases which have taken the above view are Ramballav
Dhandhanian v. Gangadhar Nathmall AIR 1956 Cal 275; Life
B Insurance Corporation of India v. United Bank of India Ltd. AIR
1970 Cal 513, D. Mohanavelu Muldaliar v. Indian Insurance and
Banking Corporation Ltd. Salem AIR 1957 Mad 115, Sarojini
Amma v. Neelakanta Pillai AIR 1961 Ker 126; Atmaram Mohanlal
Panchal v. Guntantiben AIR 1977 Guj 134, Malli Dei v. Kanchan
C Prava Dei AIR 1973 Ori 83 and Lakshmi Amma v. Saguna
Bhagath ILR 1973 Kant 827, Since there is a conflict of judicial
opinion on the question involved in this case it is necessary to
examine the above cases at some length. The law in force in
England on the above question is summarised in Halsbury's Laws
of England (Fourth Edition), Vol. 25, Para 579 thus :

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

5. We shall now proceed to analyse the provisions of Section
39 of the Act. The said section provides that a 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. If the nominee is a minor, the
policy holder may appoint any person to receive the money in the
event of his death during the minority of the nominee. That means
that if the policy holder is alive when the policy matures for payment
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he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation or change is notified to the insurer if he makes the payment bon fide to the nominee already registered with him, the insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under Section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of Section 39 of the Act here. But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy holder 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 policy holder. If that is so, on the death of the policy holder 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 Mrs. Uma Sehgal's case (supra). 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 rigour of the rules governing the testamentary succession is not relaxed even where wills are

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12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. 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. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in Fauja Singh's case (supra) and in Mrs. Uma Sehgal's case (supra) do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount; however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

F (Emphasis is ours)

At this juncture, all that needs to be stated with reference to the judgment in the Smt. Sarbati Devi case (supra) is, that the provisions with reference to nomination under the Life Insurance Act, 1938 are at variance from the ones which are subject matter of consideration in the instant case, and as such, it would suffice to merely state, that the aforesaid judgment is not of much significance, insofar as the adjudication of the present controversy is concerned.

14. Insofar as the judgment in the Gayatri De case (supra) is concerned, the same expressly dealt with the provisions of the 1983 Act. Despite the above, it would be pertinent to mention, that the said

judgment is also of no relevance for the present controversy, because there was no nomination of the original member, in the said controversy. And as such, Section 79 did not come up for consideration and interpretation therein, in the manner of the dispute and controversy which has arisen herein. A

15. Herein, the original member – Biswa Ranjan Sengupta, in whose name Flat No.4-RB 2/3, Purbachal Housing Estate, Phase-II, Sector-III, Salt Lake City, Kolkatta, was entered, had recorded the name of his daughter – Indrani Wahi (the appellant herein) as his sole nominee. The aforesaid nomination was made in terms of Section 79 of the 1983 Act. We are of the view, that Sections 79 and 80 of the 1983 Act are of pointed significance for the determination of the controversy in hand. The same are accordingly reproduced hereunder: B C

“79. Nomination of transferee.- Subject to the by-laws of a co-operative society and (sic any) member of such co-operative society may in accordance with the rules nominate a person in whose favour the co-operative society shall dispose of the share or interest of such member on his death. D

80. Disposal of deceased member’s share of interest- (1) On the death of a member of a co-operative society, other than a central society, his share or interest in the co-operative society shall, subject to the provisions of sections 57 and 78 and to the further provisions under section 79; or E

(a) to the person, if any, nominated under section 79; or

(b) if there is no nominee or if the existence or residence of the nominee cannot be ascertained by the board or if, for any other cause, the transfer cannot be made without unreasonable delay, to the person who (subject to the production by such person of probate, letter of administration or succession certificate) appears to the board to be entitled in accordance with the rules to the possession of such share or interest as part of the estate of the deceased member; or F G

(c) on the application of the person referred to in clause (b) within three months from the date of death of the member, to such person as may be specified in the application.

(2) If the share or interest of a deceased member cannot be H

- A transferred in accordance with the provisions of sub-section (1) or if the person to whom such share or interest is payable under that sub-section claims payment of the value of such share or interest or if the co-operative society in accordance with the rules and its by-laws decides to proceed under this sub-section -
- B (a) the share shall be transferred to a person qualified to be a transferee of the share, under section 78 on receipt of the value of the share from such person; and
- (b) the value of the share or the interest of the deceased member determined in accordance with the rules shall be paid to the person nominated under section 79 or to the person referred to in clause (b) of sub-section (1) of this section after deducting the amount payable under this Act to the co-operative society from the estate of deceased member.”
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D Having perused the aforesaid provisions, there can be no doubt, that where a member of a cooperative society nominates a person in consonance with the provisions of the Rules, on the death of such member, the cooperative society is mandated to transfer all the share or interest of such member in the name of the nominee. The above interpretation of Section 79, at our hands, also emerges from Section 80(1)(a) which postulates, that the share or interest of a member of the society, “on his death” shall be transferred to a person “nominated under Section 79”. It is also essential to notice, that the rights of others on account of an inheritance or succession is a subservient right. Only if a member had not exercised the right of nomination under Section 79, then and then alone, the existing share or interest of the member would devolve by way of succession or inheritance. The heading of Section 80 - “Disposal of deceased member’s share of interest” lends further credence to the above interpretation.

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G 16. In addition to the aforesaid statutory provisions, we would like to make a reference to Rules 127 and 128 of the West Bengal Co-operative Societies Rules, 1987 (hereinafter referred to as ‘the 1987 Rules’). Rules 127 and 128 of the 1987 Rules are extracted below:

H “127. Nomination of transferee.- (1) A member of a co-operative Society may in accordance with the provision of Section 79, nominate in writing any person belonging to his family to whom the share or interest or the value of such share or interest shall, on

his death, be paid or transferred under the provision of the Act: A

Provided that if a member has no family he may nominate any person to whom such share or interest or the value of such share or interest shall be paid or transferred:

Provided further that such member may, from time to time, revoke such nomination and make a fresh nomination. B

(2) Every co-operative society shall keep a register of all person (sic persons) so nominated.

(3) In case the nominee of a member dies, the member shall report the death to the society, and make a fresh nomination if he so desires. C

Explanation.- For the purpose of this rule a family shall have the same meaning as given in the Explanation to sub-section (2) of Section 13 and shall include major sons and daughters.

128. Disposal of deceased member's share or interest and procedure for calculation of value of shares.- (1) When upon the death of a member of a co-operative society, the question of transferring the share, or paying interest of such deceased member arises, and the board of such society finds that the deceased member did not make any nomination in accordance with the provisions of section 79, or that the existence or residential address of the person nominated cannot be ascertained, or that for any other sufficient cause such transfer of payment cannot be made without unreasonable delay, the board may transfer the share or pay interest of such deceased member in favour of or to any person who presents in writing his or her claim for the said share or interest and produces, in support of such claims, probate, letter of administration or succession certificate issued by a competent court having jurisdiction, and makes a written declaration in an affidavit before a Magistrate that he or she is the rightful claimant, being the legal heir or representative of the deceased. D

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(2) (a) Where a co-operative society has to make a refund of the value of a share, the value of the share shall be deemed to be equal to the amount paid upon the share:

Provided that where a portion of the assets is estimated to be bad or doubtful in the latest audited balance sheet, and is not covered

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A by funds created out of profits, the board may, for the purposes of such payment, reduce the value of the share in the same proportions as the aggregate amount of assets which are not bad or doubtful, less the amount of outside liabilities, bears to the paid-up share capital.

B (b) Where a transfer of share or interest is made, the value of the share or interest shall be deemed to be the sum actually paid by the member for the acquisition of such share or interest.”

C 17. In the same manner as is postulated under Section 79 of the 1983 Act, Rule 127 of the 1987 Rules provides, that if a nomination has been made by a member under Section 79, the share or interest or the value of such share or interest standing in the name of the deceased member, would be transferred to the nominee. It is however, necessary to notice that Rule 127 postulates nomination only in favour of a person “belonging to his family”. It is not necessary for us to deal with the issue whether the appellant – Indrani Wahi, being a married daughter of the original member – Biswa Ranjan Sengupta, could be treated as a member of the family, of the deceased member (Biswa Ranjan Sengupta), because the learned Single Judge, as also, the Division Bench of the High Court concluded, that the appellant – Indrani Wahi was a member of the family, of the original member - Biswa Ranjan Sengupta. This conclusion has not been assailed by the respondents, before this Court.

D 18. Rule 128 of the 1987 Rules also leads to the same inference. Inasmuch as Rule 128 aforementioned provides, that only in the absence of a nominee, the transfer of the share or interest of the erstwhile member, would be made on the basis of a claim supported by an order of probate, a letter of administration or a succession certificate (issued by a Court of competent jurisdiction).

E 19. Insofar as the instant aspect of the matter is concerned, there is no doubt in our mind, that even Rules 127 and 128 of the 1987 Rules, lead to the inference, that in case of a valid nomination, under Section 79 of the 1983 Act, ‘the Cooperative Society’ is liable to transfer the share or interest of a member in the name of the nominee. We hold accordingly.

F 20. Having recorded the above conclusion, it is imperative for us to deal with the conclusion recorded in paragraph 6 (already extracted above) of the judgment of this Court in the Usha Ranjan Bhattacharjee case (supra). In this behalf, it is necessary to clarify that transfer of

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share or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the concerned Cooperative Society, and is binding on the said society. The Cooperative Society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased. Insofar as the present controversy is concerned, we therefore hereby direct 'the Cooperative Society' to transfer the share or interest of the society in favour of the appellant – Indrani Wahi. It shall however, be open to the other members of the family (presently only the son of Biswa Ranjan Sengupta – Dhruba Jyoti Sengupta; we are informed that his mother – Parul Sengupta has died), to pursue his case of succession or inheritance, if he is so advised, in consonance with law.

21. The appeal stands allowed in the above terms.

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22. Learned counsel for the parties are agreed, that the controversy raised in the instant appeal be disposed of in terms of the order passed by this Court in Indrani Wahi vs. Registrar of Co-operative Societies & Ors. (C.A.No.4646 of 2006) decided on 10.03.2016.

23. In view of the above, the instant appeal is disposed of in terms of the judgment rendered by this Court in the Indrani Wahi case (supra).

Kalpana K. Tripathy

Appeals disposed of.