**CALCUTTA HIGH COURT**

Ramballav Dhandhania

Vs.

Gangadhar Nathmall

Suit Nos. 369 of 1953 and 1194 and 1196 of 1952

(P.B. Mukharji, J.)

13.01.1956

**ORDER**

**P.B. Mukharji, J.**

1. These are three applications and Counsel engaged in them are all agreed that the decision in one will cover the decision in the other two, the point-of law being the same in each case. The application that was argued before me is the application on behalf of Rama Devi, the widow of Nathmull Periwal deceased of No. 26/3, Armenian Street, Calcutta in *(Ramballav Dhandhania v. Gangadhar Nathmull)* for removal of the attachment levied at the instance of the plaintiff on the moneys payable under the Insurance Policies effected by the deceased.

2. The plaintiff in this suit obtained a decree against the defendant firm Gangadhar Nathmull. The firm was a registered firm with two partners. Gangadhar Periwal and Nathmull Periwal. The decree was dated 16-1-1953. Nathmull Periwal died on 2-5-1955, leaving the applicant as his widow and Dhanpatrai Pachisia as his son-in-law. Prior to his death, Nathmull Periwal insured his life with Messrs. National Insurance Company Limited under two different Life Insurance Policies For the value of Rs. 25,000/- under each of such Policies. In each of such Policies Nathmull Periwal nominated his widow and son-in-law to receive the insurance moneys. The terms of the nomination in each Policy were as follows :

> "I Nathmull Periwal, the Holder of Policy No. 558347 do hereby nominate my wife Shrimati Rama Devi Periwal, aged 52 years, and my son-in-law Sri Dhanpatrai Panchisia, the survivor or survivors, as the persons to receive the moneys under the above Policy in the event of my prior death. I request the National Insurance Company Limited to note the said nomination and send me a written acknowledgment thereof.
> Dated at Calcutta this 31st day of March, 1953.

SD/- Nathmull Periwal."
The nomination in the other Policy was exactly in the same terms, only the Policy number being different. The plaintiff decree-holder in execution of his decree obtained on 17-6-1955 a

prohibitory order of attachment restraining the applicant from receiving the insurance moneys under the said Policies.

3. The whole contention of the applicant is that after the death of the assured Nathmull Periwal the moneys due under the Policies did not belong to the estate of the deceased assured and were, therefore, not attachable after his death in pursuance of the decree against him. In other words, the short point is that the moneys payable to the nominee under the terms of the above nomination do not form part of the estate of the deceased judgment-debtor and, therefore, are not answerable For the satisfaction of the decree obtained against him. As will appear from the date of the attachment, such attachment was after the death of the judgment-debtor.

4. The main argument on behalf of the applicant was advanced by Mr. s. Roy. Such argument was based on Section 39(6), Insurance Act of 1938." That section provides :

> "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."

On the strength of this statutory provision it is argued that the amount secured by the Policy shall be payable to the widow and the son-in-law who are the nominees and survivors in this case and, therefore, moneys due under the said Policy do not belong to the estate of the deceased Judgment-debtor who was the assured. Mr. Roy contends that the application is made under Section 47, Civil Procedure Code , because the question raised involved the satisfaction, discharge or otherwise of the decree in question and it concerned a representative of the judgment-debtor.

5. The issue then for decision is whether such nomination in the Insurance Policy takes the moneys due under such Policy out of the estate of the assured. In support of his argument Mr. Roy relied on the decision of the Court of Appeal in - '*Krishna Lal Sadhu v. Promila Bala Dassi*[1]*',* That decision was given in the year 1928 before the Insurance Act, 1938 came into operation. That authority appears to lay down the proposition that money due under a Policy of Insurance payable to the wife of the insured after his death formed part of the estate of the insured and that no trust was created in favor of the wife by a life policy expressed to be For the benefit of the wife of the assured. Prima facie this decision is against the applicant. But Mr. Roy particularly relied on the observations of Ghosh, J., at pp. 519-520 of that report where that learned Judge said :

> "The question depends on whether the plaintiff was entitled to enforce her claim against the Insurance Society. If she was, then there could be no question that the money due under the policy belonged to her and did not form part of the assets of the estate of the deceased. The plaintiff was no doubt the nominee of the deceased; but she was no party to the contract between the deceased and the Insurance Society."

The learned Counsel For the applicant also relied on the observations of Lord Esher M.R., in - *'Cleaver v. Mutual Reserve Fund Life Association*[2]*',* which was

[1]1928 Cal 518 [AIR V 15] [2](1892) I QB 147

quoted at p. 521 of that report of the Calcutta decision and which observations were in these terms :

> "The contract is with the husband and with nobody else. The wife is no party to it. Apart from Statute, the right to sue on such a contract would clearly pass to the legal personal representatives of the husband*** I think that apart from any Statute, no interest would have passed to the wife by reason merely of her being named in the Policy,"

6. These observations also are prima facie against the applicant. This decision being prior to the Insurance Act, does not in my view assist the applicant's case in any way. What Mr. Roy wanted to do with this case is to discover some reason why Section 39(6), Insurance Act was put on the Statute Book. His attempt was to show that because apart from Statute there was no right given to the wife and which therefore caused great hardship, the Statute intervened to provide this right to the wife so that the money now belonged to the nominee wife and did not remain part of the estate of the assured. Mr. Roy also drew my attention to the comments appearing in the 3rd Edition of the Law of Contract by Cheshire and Fifoot at pages 361-62 where the learned authors say :

> "The result of these decisions, it will be observed, is not merely, as in - '*Price v. Easton*[3]*',* to occasion circuity of litigation, but to prevent the third party from suing at common law at all. So peremptory a veto Inevitably tends to injustice. It is quite common for insurances to be taken out by one person on behalf of another - a husband for his wife, or a parent for his child.
>
> Yet, even if the policy expressly confers benefits on the third party, the latter has no claim at common law. A result, so inconsistent with the needs of the modern world, demanded the intervention of Parliament, and from time to time Acts have been passed to redress a particular grievance."

Mr. Roy thought that this was the logic behind the introduction of the statutory provision contained in Section 39(6), Insurance Act of 1938 in India.

7. There are two ways of approach to this .argument advanced by Mr. Roy. One is that a statutory provision should always be construed on its own merits if that be possible and if there is no scope for ambiguity, and in such event appeal to history and to reasons For the introduction of the Statute is not very helpful because the question would remain whether such history or reason has been clearly put into the language of the section of the Statute which is under consideration. It is not infrequent that there was a reason to provide a remedy for a particular situation, but the remedy was put in such language that it ceased to be an answer to the situation intended to be remedied. The other approach is that even assuming that a remedy was given to the nominee under this statutory provision, how far was the remedy intended to go. It is necessary, therefore, to discuss the second approach.

8. According to this argument of Mr. Roy, Section 39(6), Insurance Act clothes the nominee with the title to own the money payable under the Policy. The language of the section is "the amount secured by the Policy shall be payable to such survivor or survivors." In other words, while formerly perhaps a nominee qua nominee could not

[3](1833) 4 B and Ad 433

demand from the Insurance Company such moneys on the ground that under the Common Law the nominee was no party to the contract of insurance and the Insurance Company had to enquire into the title of the representative of the estate of the assured, (sic). The Statute, therefore, can easily be explained as providing an expeditious discharge of the liability of the Insurance Company by providing that so far as the Insurance Company is concerned, the money is payable to the nominee and it need not look to the legal representatives of the assured. In other words, all that Sub-Section (6) of Section 39, Insurance Act does is to confer on the nominee the right to receive the insurance money as between such nominee and. the Insurance Company, but it does not provide For the title or ownership of that money in general.

9. The actual terms of the nomination are also in my opinion important in this case because all that this Policy does is to create an endowment under which had the assured lived after the period for which the cover was taken, the money would have belonged to the assured and not to his nominees because the eventuality which gave the nominees the right to receive the moneys is stated by the terms of the nomination to be, "I nominate my wife*** as the person to receive the moneys under the above Policy in the event of my prior death", so that if the Policy matured before death then the nominee really had no interest in this money nor could she claim that money. In other words, such insurance moneys really belonged to the estate of the assured and continued to do so. It only provided, in the event of the death occurring before the period of endowment was over, who should receive that money in place of the assured. The title to receive the money does not necessarily create a title in rem to that money which can be said to be good as against the whole world. A nominee in respect of a policy of insurance under these terms does not become the owner of the money payable to him under the policy. Such nomination only indicates the person who should receive the money should the owner die. A receiver of moneys is not the owner of the moneys. He has only the right to collect the moneys. In my view Sub-Section (6) of Section 39, Insurance Act does no more than make the nominee a receiver to receive the moneys from the insurance policy without deciding the question of title. The language used in Sub-Section (6) of Section 39, Insurance Act does not say that the amount secured by the policy shall belong to such nominee, but uses the words "shall be payable" to such nominee.

10. In aid of this conclusion that I have reached the general scheme of Section 39, Insurance Act can be examined. Sub-Section (1) gives the right to a policy-holder to nominate a person before the policy matures for payment, to be paid the money in the event of the death of the policy-holder before the time. Sub-Section (2) expressly confers on the policy-holder the right, in spite of such nomination and before the policy matures for payment, to cancel or change such nomination either by further endorsement or even by a will. Then again Sub-Section (4) expressly provides that a transfer or assignment of the policy cancels such nomination. Lastly Sub-Section (5) provides that in case a nominee or nominees the before the policy matures for payment the amount under the policy is payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate. My analysis, therefore, of Sub-Sections (1), (2), (4) and (5) of Section 39, Insurance Act, 1938 leads me to the conclusion that such nomination does not affect the title to the money secured by the policy but only provides a mode of payment to a particular person who is the nominee, and that in spite of such nomination the

policy-holder retains complete power of disposition over such insurance moneys which he can exercise either by transfer or assignment or further endorsement or will. and in any event when such nominees the the money becomes payable to the policy-holder or his legal representatives or heirs. This last provision indicates that the moneys due under the policy continue to belong to the estate of the assured, if the nominees acquire any title to the money by the nomination, then the death of the nominees would not divert the moneys under the policy to the policy-holder or his heirs or legal representatives but to the heirs or legal representatives of the nominees.

11. I, therefore, hold that Sub-Section (6) of Section 39, Insurance Act, 1938 does not make the nominee the owner of the money due under the policy.

12. I shall now take up the other part of Mr. Roy's argument that this statutory provision was intended to benefit such persons as the wife of the assured. It appears to me that Mr. Roy was too much obsessed with notions of hardship and his enthusiasm to seek reason in the legislative history is misplaced. This will be clear by reference to the next Sub-Section (7) in Section 39 of the Act. So far as married women are concerned wives and widows are amply protected by Section 6, Married Women's Property Act. Sub-Section (7) states that the whole of Section 39 of the Act shall not apply to any policy of life insurance to which Section 6, Married Women's Property Act, 1874, applies. If that is so then there is no hardship to the wife or widow. Section 6, Married Women's Property Act, 1874, says :

> "A policy of insurance effected by any married man on his own life, and expressed on the face of it to be For the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust For the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors or form part of his estate."

13. Therefore such beneficiaries as the wife or children are amply protected and there is no hardship and all that a policy-holder has to do is to express on the face of the policy that it is For the benefit of wife and/or children. The moment he does so it is beyond his control and beyond the control of his creditors and outside the part of his estate. But this was not what was done in this case. Here this is not a case of wife and/or of children. Here is a case of joint nominees, one nominee being the wife and the other being the son-in-law who were not expressed to be the beneficiaries of this money but who were stated only to have the right to receive the money only in the event of the assured dying before the maturity of the policy. The terms of nomination in this case which I have quoted do not show that the policy was expressed on the face of it to be For the benefit of the wife within the meaning of Section 6, Married Women's Property Act. The terms of nomination here make the nomination simpliciter which comes under Sub-Section (6) of Section 39, Insurance Act. This is not the end of the matter because the proviso to Sub-Section (7) of Section 39 of the Act takes it beyond doubt. That proviso states that where a nomination in favour of the wife is expressed whether or not on the face of the policy as being made under this section, Section 6, Married Women's Property Act shall not be deemed to apply or to have applied to the policy. (That means that the policy-holder can elect to I come either under nomination under Sub-Section (6) or under trust under Sub-Section (7) but if he does elect to nominate then such nomination takes it out of the trust under Section 6, Married Women's

Property Act.

14. This conclusion appears to me also to accord with commonsense. To give the policy-holder the right to cancel the nomination by transfer or assignment or will or further endorsement and to provide in the case of the nominee's dying before maturity or before the policy-holder the money to belong to the policy-holder or his heirs or legal representatives and then so to construe Sub-Section (6) as making such moneys under the policy nominee's own money is to indulge in contradictions. Such rights of the policy-holder expressly recognized by the different sub-sections of Section 39 of the Act show that the policy-holder has the right of disposition over the moneys in spite of nomination, so that the moneys due under the policy come within the exact language of Section 60, Civil Procedure Code which describes properties of the judgment-debtor which are attachable. One can understand why Section 39, Insurance Act does not apply to trusts created under Section 6, Married Women's Property Act relating to insurance policies. Such trusts are expressly said by the Statute to be beyond the control of the policy-holder and are expressly said not to form part of the estate of the policy-holder. But the policy-holder cannot have the best of both the worlds, on the one hand to have full right of disposition in spite of nomination and at the same time the nominee to have title to the money.

15. It appears that there is not much of case law on the subject. My attention has been drawn to the decision in - '*Amardas v. Sri Dadu Dayalu Mahasabha*[4]*',* where the learned Judge came to the conclusion that a nominee did not become the owner of the money payable under the Policy merely by reason of the nomination but the policy-holder continued to be the owner up to the end of his life and had full power of disposal over it.
The learned Judge came to the conclusion that such moneys payable under the policy should be treated as part of the testator's assets. The case there arose on the point of Court-fees payable. The decision appears to me not to be in conflict with the conclusions that I have reached.

16. In the circumstances and For the reasons stated, this application must fail. I, therefore, dismiss this application. I shall not, however, make in the special circumstances of this case the applicant liable For the costs, but I direct that the respondent's costs of the application will be added to his costs in execution of the decree.
Application dismissed.
[4] AIR 1953 All 721