MANU/MH/2599/2016

Equivalent Citation: 2017(1)ABR263, 2017(5)ALLMR307, 2017(1)BomCR319, [2017]136CLA119(Bom), [2017]200CompCas143(Bom), (2017)3CompLJ60(Bom), [2017]139SCL432(Bom)

IN THE HIGH COURT OF BOMBAY

Appeal No. 313 of 2015 in Notice of Motion No. 822 of 2014 in Suit No. 503 of 2014
and Appeal No. 311 of 2015 in Testamentary Petition No. 457 of 2014

Decided On: 01.12.2016

Appellants: **Shakti Yezdani and Ors.**
Vs.
Respondent: **Jayanand Jayant Salgaonkar and Ors.**

Hon'ble Judges/Coram:
Abhay Shreeniwas Oka and A.A. Sayed, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Rajendra Pai and A.R. Pai i/b Bina R. Pai

For Respondents/Defendant: Snehal Shah and Yatin R. Shah i/b Yatin R. Shah & Co.

Case Note:
Company - Vesting of shares - Sections 109A and 109B of Companies Act, 1956 - Present reference filed to determine issue pertaining to vesting of shares of holder in nominee upon his death - Whether nominee of holder of shares was entitled to beneficial ownership of shares to exclusion of all other persons who were entitled to inherit estate of holder - Held, Section 109B of Act did not suggest that on nomination being made by deceased shareholder, his nominee becomes owner to exclusion of all heirs - Provisions regarding nomination were made with view to ensure that estate of deceased were protected till legal representatives of deceased take appropriate steps - Object of provisions of Companies Act was not to either provide mode of succession or to deal with succession - Vesting under Section 109A of Act did not create third mode of succession - Reference answered. [29],[34] and[35]

JUDGMENT

Abhay Shreeniwas Oka, J.

THE CONTROVERSY

1. The issue which arises for consideration in this group of Appeals is whether the view taken by the learned Single Judge in the case of Harsha Nitin Kokate v. The Saraswat Co-operative Bank Limited and Others MANU/MH/0354/2010 : 2010(3)Mh.L.J 780 is correct. In Harsha Nitin Kokate's case, in paragraphs 24 and 25, it was held thus:

> **"24. In the light of these judgments section 109A of the Companies Act is required to be interpreted with regard to the vesting of the shares of the holder of the shares in the nominee upon his death. The act sets out that the nomination has to be made during the life**

time of the holder as per procedure prescribed by law. If that procedure is followed, the nominee would become entitled to all the rights in the shares to the exclusion of all other persons. The nominee would be made beneficial owner thereof. Upon such nomination, therefore, all the rights incidental to ownership would follow. This would include the right to transfer the shares, pledge the shares or hold the shares. The specific statutory provision making the nominee entitled to all the rights in the shares excluding all other persons would show expressly the legislative intent. **Once all other persons are excluded and only the nominee becomes entitled under the statutory provision to have all the rights in the shares none other can have it. Further section 9.11 of the Depositories Act 1996 makes the nominee's position superior to even a testamentary disposition.** The non-obstante Clause in section 9.11.7 gives the nomination the effect of the Testamentary Disposition itself. Hence, any other disposition or nomination under any other law stands subject to the nomination made under the Depositories Act. Section 9.11.7 further shows that the last of the nominations would prevail. This shows the revocable nature of the nomination much like a Testamentary Disposition. A nomination can be cancelled by the holder and another nomination can be made. Such later nomination would be relied upon by the Depository Participant. That would be for conferring of all the rights in the shares to such last nominee.

25. A reading of section 109A of the Companies Act and 9.11 of the Depositories Act makes it abundantly clear that the intent of the nomination is to vest the property in the shares which includes the ownership rights thereunder in the nominee upon nomination validly made as per the procedure prescribed, as has been done in this case. These sections are completely different from section 39 of the Insurance Act set out (supra) which require a nomination merely for the payment of the amount under the Life Insurance Policy without confirming any ownership rights in the nominee or under section 30 of the Maharashtra Cooperative Societies Act which allows the Society to transfer the shares of the member which would be valid against any demand made by any other person upon the Society. Hence these provisions are made merely to give a valid discharge to the Insurance Company or the Co-operative Society without vesting the ownership rights in the Insurance Policy or the membership rights in the Society upon such nominee. The express legislature intent under section 109A of the Companies Act and section 9.11 of the Depositories Act is clear."

(emphasis added)

By the impugned order dated 31st March 2015, the learned Single Judge held that the view taken by the learned Single Judge in the case of Harsha Nitin Kokate v. The Saraswat Co-operative Bank Limited (for short "Kokate's case") is per incuriam.

2. In short, the questions to be decided in these Appeals can be formulated as under:-

"(i) Whether a nominee of a holder of shares or securities appointed under Section 109A of the Companies Act, 1956 read with the Bye-laws under the Depositories Act, 1996 is entitled to the beneficial ownership of the shares or securities subject matter of nomination to the exclusion of all other persons who are entitled to inherit the estate of the holder as per the law of

succession?

(ii) Whether a nominee of a holder of shares or securities on the basis of the nomination made under the provisions of the Companies Act, 1956 read with the Bye-laws under the Depositories Act, 1996 is entitled to all rights in respect of the shares or securities subject matter of nomination to the exclusion of all other persons or whether he continues to hold the securities in trust and in a capacity as a beneficiary for the legal representatives who are entitled to inherit securities or shares under the law of inheritance ?

(iii) Whether a bequest made in a Will executed in accordance with the Indian Succession Act, 1925 in respect of shares or securities of the deceased supersedes the nomination made under the provisions of Sections 109A and Bye-Law No. 9.11 framed under the Depositories Act, 1996?."

3. When these Appeals were placed before a Division Bench of this Court on 7th September 2015, the following order was passed:

"2. It is urged by the learned counsel appearing on behalf of the Appellants that the learned Single Judge, while passing the impugned order, has observed that the Judgment and Order delivered by another learned Single Judge, [Justice Smt. Roshan Dalvi in the matter of Harsha Nitin Kokate v. The Saraswat Co-op. Bank Ltd. & Ors. In Notice of Motion No. 2351 of 2008 in Suit No. 1972 of 2008], is per incuriam. One of the submissions, which has been urged before us, is that the only option which was available before the learned Single Judge, if he disagree with the view taken by the another learned Single Judge, was to refer the matter to the Hon'ble Chief Justice so that the issue can be referred to a Larger Bench or Division Bench.

3 . Under these circumstances, we are of the view that it would be appropriate to place this matter before the Hon'ble Chief Justice so that appropriate orders can be passed.

4. Office to place the matter before the Hon'ble Chief Justice."

On the basis of the order dated 7th September 2015, these Appeals were placed before the Hon'ble the Chief Justice. An Administrative Order was passed by the Hon'ble the Chief Justice on 25th April 2016 assigning these Appeals before a Division Bench presided over by one of us (A.S. Oka, J). Accordingly, the Appeals were taken up for final disposal.

FACTS OF THE CASE

4. It will be necessary to make a brief reference to the facts of the case which are necessary for deciding the issues involved in these Appeals. These two Appeals take an exception to the common judgment and order dated 31st March 2015 passed by the learned Single Judge. Appeal No. 313 of 2015 has been preferred by the Original fifth and sixth Defendants in Suit No. 503 of 2014. Appeal No. 311 of 2015 has been preferred by the Petitioner in Testamentary Petition No. 457 of 2014.

5. Firstly, a reference to the facts of the case in Suit No. 503 of 2014 will be necessary. The said suit has been filed for administration of the estate of late Jayant Shivram Salgaonkar and for other consequential reliefs. The Plaintiff therein and the first nine Defendants therein are the heirs and legal representatives of the late Jayant

Shivram Salgaonkar (for short "late Jayant"), who died on 20th August 2013. According to the case made out in the suit, late Jayant left behind several properties including the shares in M/s. Sumangal Press Private Limited as well as the shares and investments in various companies. The second and fourth Defendants in the suit filed a written statement for contesting the suit. In the said written statement, it is contended that late Jayant left behind his last Will and testament dated 27th June 2011 by which he has dealt with his shares in the suit properties and in particular the shares held by him in M/s. Sumangal Press Private Limited. It is claimed that the second and third Defendants have been appointed as the Executors under the last Will and testament who have filed an Application for grant of probate in respect of the said Will. It is stated that the said Application has been converted into a suit which is still pending. It is contended that by the said Will, a bequest has been made by late Jayant of his share in the properties listed at Item Nos. 2, 3, 6 and 7 of the Exhibit-A to the Plaint in favour of a Public Trust which is the tenth Defendant in the suit. Item Nos. 6 and 7 in Exhibit A are the shares held by late Jayant in Sumangal Press Pvt. Ltd. and M/s. Sumangal Artech.

6. The fifth and sixth Defendants filed their written statement in which they claimed that they were the nominees of late Jayant in respect of the investments made by him in Mutual Funds. By virtue of the nomination, they claimed that the securities in respect of which they were made nominees are exclusively vested in them. The fifth and sixth Defendants relied upon the Regulation 29A of Securities and Exchange Board of India (Mutual Fund) Regulations, 1996 apart from Sections 109A and 109B of the Companies Act, 1956 (for short "Companies Act"). The sixth Defendant claims to be a nominee in respect of a fixed deposit made by late Jayant with IDBI Bank. She claims to be an absolute owner of the fixed deposit on the basis of Section 45-ZA of the Banking Regulations Act, 1949 (for short "the said Act of 1949"). That is how the issue of the effect of nomination arose in Suit No. 503 of 2014.

7. Testamentary Petition No. 457 of 2014 is filed by the Appellant in Appeal No. 313 of 2015. The Testamentary Petition was filed for grant of probate in respect of the alleged last Will and testament of one Mrs. Urmila Shatishchandra Ghatalia. The Petitioner/Appellant, one of the sons of the deceased testator, is claiming to be one of the Executors appointed under the said will. The Respondent in Appeal No. 311 of 2015 filed a Caveat. The learned Single Judge in the impugned judgment and order has noted that the Respondent in the Appeal sought to file a Caveat. The learned Single Judge noted that the issue was whether or not the Respondent who is a daughter of the deceased testator is entitled to file and maintain a caveat. The learned Single Judge noted that a settlement was suggested which was nearly reached. The learned Single Judge has noted the only contentious issue related to some of the investments of the deceased. The Appellant/Petitioner contended that he was a nominee in respect of those investments and in view of the nomination, notwithstanding anything stated in the Will, the said investments exclusively belonged to him on the demise of his mother, the deceased testator. According to the learned Single Judge, the contention of the Appellant/Petitioner is that those investments do not form a part of distributable estate of the deceased testator. In Paragraph 6 of the impugned judgment, the learned Single Judge noted that the claim of the said Appellant of the exclusive rights in respect the investments is founded on the judgment of the learned Single Judge in Kokate's case. He has noted that in Kokate's case, the learned Single Judge considered the provisions of Section 109A of the Companies Act and the Bye-Law No. 9.11 framed under the said Act of 1996.

THE SUMMARY OF THE SUBMISSIONS MADE BY THE PARTIES

8. The Appellant appearing in person in Appeal No. 311 of 2015 made detailed submissions. Similarly, the learned counsel appearing for the Appellants in Appeal No. 313 of 2015 made detailed submissions. The view taken by the learned Single Judge in the impugned order is that the decision of the learned Single Judge in Kokate's case is per incuriam and the nomination will not affect the validity of the testamentary disposition made by the owner of the securities/shares.

9. The Appellant appearing in person in Appeal No. 311 of 2015 submitted that the learned Single Judge had no jurisdiction to decide the issue which has been decided under the impugned order inasmuch as the jurisdiction of the Testamentary Court dealing with an Application for grant of probate is very limited. He submitted that the jurisdiction is confined to decide the issue of proof of execution, genuineness and validity of the Will set up by the propounder. He urged that the Testamentary Court dealing with a Petition for Probate has no jurisdiction to adjudicate upon the issue of title of the deceased testator to the properties subject matter of the Will in respect of which a probate is sought. He submitted that assuming that he did not raise any objection before the learned Single Judge, the law is very well clear. Even by consent, the parties cannot confer jurisdiction on the Court of Law which it did not possess. He submitted that the issue based on nomination did not arise in the Petition filed by him. The Appellant appearing in person pointed out that he has filed brief submissions on the issue of nomination in which he has specifically contended that the Caveator/Respondent in the Appeal has never raised a contention that the testamentary disposition will supersede the nomination. We must note here that the Appellant contended that till 10th April 2015, he was not even aware of the impugned judgment and order. Without prejudice to his contention that the learned Single Judge while dealing with the Probate Petition had no jurisdiction to decide the issue, he also made submissions on merits. He invited the attention of the Court to various provisions of the Companies Act. Inviting our attention to Section 109A and Section 109B of the Companies Act, he urged that the nomination in respect of the shares confers unlimited rights in respect of the shares on the nominee and there is nothing in the Companies Act to show that the shares are to be held in a fiduciary capacity by the nominee after the demise of the owner of the shares. He submitted that there is a vesting of shares in the nominee on the death of the owner. The Appellant appearing in person also made analysis of various decisions considered by the learned Single Judge and various decisions which are cited across the bar. We are not reproducing in detail the analysis made by the Appellant appearing in person of the said decisions as we have extensively dealt with the said decisions. He also submitted that the finding that the decision in Kokate's case is per incuriam is completely erroneous.

10. Learned counsel appearing for the Appellants in support of Appeal No. 313 of 2015 urged that apart from the fact that the learned Single Judge in Kokate's case had considered all the binding precedents and, therefore, the said decision cannot be said to be per incuriam, the provisions of Sections 109A and 109B of the Companies Act are completely different from the provisions in relation to the nomination under the Insurance Act, 1939, Banking Regulations Act, 1949, National Saving Certificates Act, 1959, Employees' Provident Fund and the Miscellaneous Provisions Act, 1952. He submitted that the provisions regarding nomination under none of the said Acts are pari materia with the provisions of the Companies Act. Another issue canvassed by him was that the issue decided by the learned Single Judge could have been considered only at the time of final hearing of the Notice of Motion. He pointed out the order dated 7th May 2014 passed in the said Notice of Motion by the learned Single Judge which directed that the Notice of Motion should be heard finally. He submitted that there was no occasion for deciding the said issue as a preliminary

issue

11. Learned counsel appearing for the Appellants further submitted that if the learned Judge was of the view that Kokate's case was not correctly decided, the propriety required the learned Single Judge to make a request to the Hon'ble the Chief Justice for making a reference to a Larger Bench. He submitted that the learned Single Judge has not considered the intention of the legislature while dealing with Section 109A and Section 109B of the Companies Act which were introduced by way of amendment by the Act of 1999. He submitted that the provisions make it clear that the same will override the provisions in relation to the law of intestate and testamentary succession as far as the shares are concerned. He submitted that none of the decisions which are relied upon by the learned Single Judge in the impugned judgment deal with any provisions which are similar to the relevant provisions of the Companies Act. He urged that Sections 109, 109A and 109B will have to be read with the other provisions of the Companies Act. The learned counsel invited the attention of the Court to the decision of the Apex Court in the case of Smt. Sarbati Devi and Another v. Smt. Usha Devi MANU/SC/0231/1983 : AIR 1984 SC 346. He pointed ou that learned Single Judge has followed the law laid down in the said decision. He has taken us through the decision in Kokate's case in support of his contention that the said decision gives a complete effect to the intention of the legislature of incorporating Sections 109A and 109B of the Companies Act. He urged that the provisions of Section 109B will have to be considered along with Section 109A and in particular Sub-section (3) of Section 109B of the Companies Act. By inviting our attention to the provisions of Sections 109, 109A and 109B of the Companies Act along with other provisions therein, he made an elaborate analysis of Sections 109A and 109B. He submitted that as the nominee has not been defined under the Companies Act, the meaning of the word will have to be understood in the context of Sections 109A and 109B of the Companies Act. He urged that a different meaning to the word "vests" could not have been given by the learned Single Judge in the impugned order. He submitted that the scheme of Sections 45-ZA of the Banking Regulations Act, 1949 dealing with the nomination is completely different from the scheme of the Companies Act. He urged that the provisions of Companies Act dealing with the nomination provide for vesting of shares in nominee and the said provisions override the law of intestate and testamentary succession. On the contrary, the provisions regarding nomination in other Statutes specifically restrict the rights of a nominee. He extensively relied upon a decision of the Delhi High Court in the case of Dayagen P. Ltd. V Rajendra Dorian Punj and Another 2009 151 COM Cases 92 (Delhi). He has taken us through the various decisions which are referred to and relied upon in Kokate's case as well as in the impugned judgment and order. He referred to the various other decisions to which we will make a reference in the subsequent part of the judgment. He also invited our attention to the relevant provisions of the Indian Succession Act, 1925. He submitted that the provisions regarding testamentary succession under the Indian Succession Act, 1925 do not apply when the provisions of the testamentary succession as provided in any other law for the time being in force are applicable. He urged that the learned Single Judge has completely overlooked the fact that the provisions of Section 109A and in particular Sub-Section 3 thereof incorporate a non-obstante clause which specifically provides that it will override the provisions of any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of shares or debentures of the Company. It specifically provides for vesting of shares or debentures in a Company in the nominee on the death of the shareholder or holder of debentures, as the case may be. He would, therefore, urge that the impugned order is completely erroneous. He also invited our attention to the Bye-Law No. 9.11 framed

under the Depositories Act, 1996.

12. The learned counsel appearing for the original Plaintiff in Suit No. 503 of 2015 supported the impugned judgment. He relied upon several decisions while referring to the language used by Section 109A and Section 109B of the Companies Act. He pointed out that the nomination would be always subject to the testamentary disposition by holder of shares or debentures. Even the learned counsel for the contesting Respondent in the other Appeal made submissions.

THE ISSUE OF PER INCURIAM

13. We have given careful consideration to the submissions. Though the submissions have been made on the issue whether the decision in Kokate's case is per incuriam, the said issue need not be gone into inasmuch as a Division Bench can always examine the decisions of the learned Single Judges and record a finding as to which view is correct. If the view taken by the learned Single Judge in the impugned order is otherwise correct in law, it is not necessary for us to deal with the issue whether the decision in Kokate's case is per incuriam. Similarly, when we find that the view taken by the learned Single Judge is erroneous, the impugned order will have to be set aside on merits and while doing so, it will not be necessary to go into the question whether the decision in Kokate's case is per incuriam as held by the learned Single Judge. Moreover, we find that before the learned Single Judge as well as this Bench, submissions have been made on merits of the issue. The questions framed in Paragraph No. 2 above will squarely arise in the suit subject matter of Appeal No. 313 of 2015. Therefore, we are examining the impugned order on its own merits in the light of the submissions made across the bar.

WHETHER THE ISSUES WILL ARISE IN TESTAMENTARY PETITION

14. The Appellant appearing in person in support of the Appeal No. 311 of 2015 has mainly contended that the issue decided by the learned Single Judge did not arise in this Testamentary Petition. The Appellant in person is right in the sense that the issue of title of the testator to the property subject matter of the will cannot be decided in the proceedings of probate. That is the well settled law(see the decision of the Apex Court in the cases of Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon MANU/SC/8060/2007 : (2007)11 SCC 357). Hence, the contention of the Appellant appearing in person that the issue could not have been decided in Testamentary Petition appears to be correct. The issues will certainly arises in Suit No. 503 of 2014 in view of the stand taken in the written statement of the concerned Defendants. Therefore, in the Appeal arising out of the said suit, the issue will have to be decided in any case.

THE RELEVANT STATUTORY PROVISIONS

15. In these Appeals, we are concerned with the two provisions of the Companies Act which are Sections 109A and 109B which read thus:

> "109A. NOMINATION OF SHARES.--
>
> (1) Every holder of shares in, or holder of debentures of, a company may, at any time, nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.
>
> (2) Where the shares in, or debentures of, a company are held by more than

one person jointly, the joint holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.

(3) 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 shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in, or debentures of, the company, the nominee shall, on the death of the shareholder or holder of debentures of, the company or, as the case may be, on the death of the joint holders becomes entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of, the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the shares, or holder of debentures, to make the nomination to appoint, in the prescribed manner, any person to become entitled to shares in, or debentures of, the company, in the event of his death, during the minority.]

B. TRANSMISSION OF SHARES.--

(1) Any person who becomes a nominee by virtue of the provisions of section 109A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either -

(a) to be registered himself as holder of the share or debenture, as the case may be; or

(b) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debenture holder, as the case may be, could have made.

(2) If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, himself, as the case may be, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder, as the case may be.

(3) All the limitations, restrictions and provisions of this Act relating to the right to transfer and the registration of transfers of shares or debentures shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(4) A person, being a nominee, becoming entitled to a share or debenture by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share or debenture except that he shall not, before being registered a member in respect of his share or debenture, be entitled in respect of it to exercise any right conferred by membership in relation to

meetings of the company:

> Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share or debenture, until the requirements of the notice have been complied with.]"

16. Apart from the provisions of the Companies Act, we are also concerned with the Bye-Law No. 9.11 framed in exercise of the powers under the Depositories Act, 1996 which reads thus:

> "9.11. TRANSMISSION OF SECURITIES IN THE CASE OF NOMINATION:
>
> **9.**11.1. In respect of every account, the Beneficial Owner(s) ("Nominating Person(s)") may nominate any person ("Nominee") to whom his securities shall vest in the event of his death in the manner prescribed under the Business Rules from time to time.
>
> **9.**11.2. The securities held in such account shall automatically be transferred in the name of the Nominee, upon the death of the Nominating Person, or as the case may be, all the Nominating Persons subject to the other Bye Laws mentioned hereunder.
>
> **9.**11.3...
>
> **9.**11.4. Beneficial Owner(s) may substitute or cancel a nomination at any time. A valid nomination, substitution or cancellation of nomination shall be dated and duly registered with the Participant in accordance with the Business Rules prescribed therefore. The closure of the account by the Nominating Person(s) shall conclusively cancel the nomination.
>
> **9.**11.5. A Nominee shall not be entitled to exercise any right conferred on Beneficial Owners under these Bye Laws, upon the death of the Nominating Person(s), unless the Nominee follows the procedure prescribed in the Business Rules for being registered as the Beneficial Owner of the securities of the Nominating Person(s) in the books of the Depository.
>
> **9.**11.6. A nominee shall on the death of the Nominating Person(s) be entitled to elect himself to be registered as a Beneficial Owner by delivering a notice in writing to the Depository, along with the certified true copy of the death certificate issued by the competent authority as prescribed under the Business Rules. Subject to scrutiny of such election, the securities in the Account shall be transmitted to the account of the Nominee held with any depository.
>
> **9.**11.7. Notwithstanding anything contained in any other disposition and/or nominations made by the Nominating Person(s) under any other law for the time being in force, for the purposes of dealing with the securities lying to the credit of deceased Nominating Person(s) in any manner, the Depository shall rely upon the last nomination validly made prior to the demise of the Nominating Person(s). The Depository shall not be liable for any action taken

in reliance upon and on the basis of nomination validly made by the Nominating Person(s)."

CONSIDERATION OF SUBMISSIONS

KOKATE'S CASE

17. Firstly, we propose to deal with the decision of the learned Single Judge in Kokate's case. The said decision is rendered in a Notice of Motion arising out of a suit. The Plaintiff therein was the widow of one Nitin Kokate, who died on 5th July 2007. Her deceased husband held certain shares in D-mat Account with the Depository Participant Cell of the first Defendant in the suit. The husband of the Plaintiff had made a nomination in favour of the third Defendant. The third Defendant was the nephew of the deceased husband of the Plaintiff. The Plaintiff claimed a title in the said shares after the demise of her husband as the sole heir and legal representative under the law of succession. The third Defendant claimed ownership of the shares on the basis of the nomination made by the deceased husband of the Plaintiff. The learned Single Judge considered the provisions of Section 109A of the Companies Act and the Bye-Law No. 9.11 framed under the Depositories Act, 1996. Section 109A and the Bye-Law No. 9.11 are already quoted above. The learned Single Judge considered the decision of the Apex Court in the case of Sarbati Devi dealing with the nomination under Section 39 of the Insurance Act. The learned Single Judge also dealt with the nomination made in accordance with Section 30 of the Maharashtra Co-operative Societies Act, 1960. The learned Single Judge in Kokate's case observed that in case of the nominees under the aforesaid two Enactments, the nominee becomes merely a trustee of the estate of the deceased. It was held that Section 109A of the Companies Act stands on a separate footing. Thereafter, the learned Single Judge considered the meaning of the word "vests" and ultimately in Paragraphs 24 and 25 of the said decision, she held thus:

> "24. **In the light of these judgments Section 109A of the Companies Act is required to be interpreted with regard to the vesting of the shares of the holder of the shares in the nominee upon his death. The act sets out that the nomination has to be made during the life time of the holder as per procedure prescribed by law. If that procedure is followed, the nominee would become entitled to all the rights in the shares to the exclusion of all other persons. The nominee would be made beneficial owner thereof. Upon such nomination, therefore, all the rights incidental to ownership would follow.** This would include the right to transfer the shares, pledge the shares or hold the shares. The specific statutory provision making the nominee entitled to all the rights in the shares excluding all other persons would show expressly the legislative intent. Once all other persons are excluded and only the nominee becomes entitled under the statutory provision to have all the rights in the shares none other can have it. Further Section 9.11 of the Depositories Act 1996 makes the nominee's position superior to even a testamentary disposition. **The non-obstante Clause in Section 9.11.7 gives the nomination the effect of the Testamentary Disposition itself. Hence, any other disposition or nomination under any other law stands subject to the nomination made under the Depositories Act. Section 9.11.7 further shows that the last of the nominations would prevail.** This shows the revocable nature of the nomination much like a Testamentary Disposition. A nomination can be cancelled by the holder and

another nomination can be made. Such later nomination would be relied upon by the Depository Participant. That would be for conferring of all the rights in the shares to such last nominee.

25. A reading of Section 109A of the Companies Act and 9.11 of the Depositories Act makes it abundantly clear that the intent of the nomination is to vest the property in the shares which includes the ownership rights thereunder in the nominee upon nomination validly made as per the procedure prescribed,, as has been done in this case. These Sections are completely different from Section 39 of the Insurance Act set out (supra) which require a nomination merely for the payment of the amount under the Life Insurance Policy without confirming any ownership rights in the nominee or under Section 30 of the Maharashtra Cooperative Societies Act which allows the Society to transfer the shares of the member which would be valid against any demand made by any other person upon the Society. Hence these provisions are made merely to give a valid discharge to the Insurance Company or the Cooperative Society without vesting the ownership rights in the Insurance Policy or the membership rights in the Society upon such nominee. The express legislature intent under Section 109A of the Companies Act and Section 9.11 of the Depositories Act is clear."

(emphasis added)

CONSIDERATION OF VARIOUS DECISIONS AND CONCLUSIONS

18. We must make a reference to the decisions of the Apex Court and this Court dealing with the issue of nomination under the different enactments. A recent decision of the Apex Court is in the case of Indrani Wahi v. Registrar of Co-op. Societies and Others MANU/SC/0445/2016 : (2016) 6 SCC 440. The Apex Court ir the said decision considered the provisions of nomination under Sections 69 and 70 of the West Bengal Co-operative Societies Act, 1983 (for short "the West Bengal Act of 1983"). The Apex Court also considered its own decision in the case of Sarbati Devi which dealt with the nomination under the Life Insurance Act, 1938. After considering Section 79 of the West Bengal Act of 1983, the Apex Court came to the conclusion that where a member of a Co-operative Society nominates a person in consonance with the provisions of the Rules framed under the West Bengal Act of 1983, the Co-operative Society is mandated to transfer all the shares or interest of such member in the name of the nominee. This view was taken by the Apex Court in the light of the express provisions of Section 80 of the said Act of 1983 read with Rule 127 of the Rules of 1987 framed under the West Bengal Act of 1983. Sections 79 and 80 of the said Act of 1983 appear to be different from the provisions relating to the nomination in the Maharashtra Cooperative Societies Act, 1960. In Paragraphs 19 to 23 of the decision of the Apex Court in the case of Indrani Wahi, the Apex Court concluded as under:-

"**19.** 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.

20. 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).

21. 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.

22. Having recorded the above conclusion, it is imperative for us to deal with the conclusion recorded in para 6 (already extracted above at p. 448*f-h* and p. 449*a-b*) of the judgment of this Court in *Usha Ranjan Bhattacharjee case* [*Usha Ranjan Bhattacharjee* v. *Abinash Chandra Chakraborty*, MANU/SC/1513/1997 : (1997) 10 SCC 344].**In this behalf, it is necessary to clarify that transfer of share or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the cooperative society concerned, 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.**

23. 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. I**t 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**."

(emphasis added)

After issuing the directions to the Co-operative Society to transfer the shares of the deceased member in the name of the Appellant who was a nominee, the Apex Court specifically observed that it will be open for other members of the family of the deceased member to pursue their case of succession or inheritance in consonance with law. Thus, the conclusion drawn by the Apex Court was that a Cooperative Society is bound by the nomination made by the member. In case of such nomination, the Society has no option except to transfer the shares in the name of the nominee after the death of the member. However, those who are claiming

inheritance will be entitled to pursue their remedies and claim title in the shares on the basis of inheritance. Thus, the conclusion drawn by the Apex Court was not that the nomination binds the legal representatives of the deceased shareholder or a member of the Society or that it overrides the law of succession.

19. The scope of the nomination governed by Section 30 of the Maharashtra Co-operative Societies Act, 1960 read with the Rule 25 of the Maharashtra Co-operative Societies Rules, 1961 was considered by a learned Single Judge of this Court in the case of Ramdas Shivram Sattur v. Rameshchandra Popatlal Shah MANU/MH/0235/2009 : 2009(3)Bom C R 705. After quoting both the provisions, the learned Judge referred to another decision of the learned Single Judge in the case of Gopal Vishnu Ghatnekar v. Madhukar Vishnu Ghatnekar MANU/MH/0269/1982 : AIR 1982 Bom 482. The said decision was approved by a Division Bench of this Court. The learned Single Judge quoted the decision of the Division Bench in Paragraph 9. Ultimately, in Paragraph 10, the learned Single Judge concluded that by a nomination under Section 30 of the Maharashtra Co-operative Societies Act, 1960, there is no disposition of the properties by the member of the Society and, therefore, the nominee on the demise of the member does not become the owner of the properties in question held by virtue of the membership of the Society.

20. We may note here that Section 80 of the West Bengal Act of 1983 specifically provides that on the death of a member of a Cooperative Society, the share or interest of the member in the Cooperative Society shall stand transferred to the person nominated under Section 79. Sub-section (4) of Section 30 of the Maharashtra Cooperative Societies Act, 1960 specifically provides that all transfers duly made by the Society under the said provision to the nominee shall be valid and effectual against any demand made upon the Society by any other person. Notwithstanding the provision of Section 80 of the West Bengal Act of 1983 which mandates that on the death of a member of a Cooperative Society, his share or interest shall be transferred to nominee, the Apex Court did not hold that nomination supersedes the succession or inheritance in accordance with law.

21. In the case of Sarbati Devi, the Apex Court considered the effect of nomination under Section 39 of the Life Insurance Act, 1938. Paragraph 3 of the said decision sets out the question which required consideration. In Paragraph 5, the Apex Court analyzed Section 39. In Paragraph 8, the Apex Court observed thus:

> "We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under the law."

Ultimately, in Paragraph 12, the Apex Court held thus:

> "**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 *Fauza Singh case* [MANU/DE/0280/1978 : AIR 1978 Del 276] and in *Uma Sehgal case* [MANU/DE/0337/1981 : AIR 1982 Del 36 : ILR (1981) 2 Del 315] 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**."

(emphasis added)

22. In the case of Nozer Gustad Commissariat v. Central Bank of India and Others MANU/MH/0375/1992 : 1993(2)Bom.C.R. 8, the learned Single Judge of this Court considered the effect of nomination under the Employees' Provident Fund Scheme, 1952. In Paragraph 8, the learned Single Judge quoted the relevant provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Section 10 of the said Act reads thus:

"10. Protection against attachment.

(1) Amount standing to the credit of any member in Fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 (3 of 1909) nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to have any claim on, any such amount.

(2) **Any amount standing to the credit of a member in the fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorised by the said Scheme or rules, vest in the nominee** and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of exempted employee and shall also not be liable to attachment under any decree or order of any court.

(3) The provisions of sub-section 1 and sub-section 2 shall, so far as may be, apply in relation to the pension or any other amount, payable under the Pension Scheme and also in relation to any amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the Fund."

(emphasis added)

Thereafter, the learned Single Judge proceeded to discuss the meaning of the word

"vest" used in Sub-section (2) of Section 10. Apart from referring to the decision of the Apex Court in the case of Sarbati Devi, the learned Single Judge considered the decision of the Apex Court in the case of Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust MANU/SC/0082/1956 : AIR 1957 SC 344, wherein the Apex Court discussed various meanings of the word "vests". In Paragraph 16, the learned Single Judge held thus:

> "16. There are two main points of distinction, which have to be kept in mind while considering the submission concerning literal interpretation of section 10(2) of the 1952 Act as appears to have been done by the High Court of Calcutta. The question to be asked is why the word "absolutely" hitherto before existing in section 5 of the Employees' Provident Funds Act, 1925 was deliberately omitted by the Amending Act XI of 1946. Was it the intention of the Legislature that even after omission of the said word from the said provision, the nominee must be held to have an absolute right to the provident fund amount lying to the credit of the deceased employee. Even prior to 1946, some of the High Courts had interpreted the provision to mean that the nominee of provident fund had no title to the amount belonging to the deceased subscriber. The object of Amending Act, 1946 by directing omission of word absolutely from section 5 of the Act of 1925 was to make it clear beyond doubt that the nominee would have no title to the amount. Section 10(2) of Act of 1952 does not use the word "absolutely". It appears to me that the Supreme Court judgment highlighting various meanings of the word "vest" in the case of *The Fruit and Vegetable Merchants' Union* v. *The Delhi Improvement Trust*, MANU/SC/0082/1956 : AIR 1957 SC 344 and holding that the word 'vest' in the context could mean mere possession for specific purpose without any title was not cited before the Hon'ble High Court of Calcutta. If the various English and Indian cases noticed by Hon'ble Justice Sinha of the Supreme Court in the above referred judgment are to be considered and applied having regard to the context and object of the Act, **it would follow that the use of the word "vest" in section 10(2) of the Act merely means that the nominee is merely entitled to collect the amount for benefit of heirs of the deceased coupled with exemption thereof from attachment and subject to category of heirs being restricted as specified in Provident Funds Scheme. I therefore, hold that the provident fund amount forms belonging to the estate of the deceased and the petitioner is solely entitled thereto**. Having regard to the facts of this case, the respondent No. 4 is liable to be restrained from collecting the said amount from the former employer of the deceased. It is the duty of this Court to pass appropriate orders so as to safeguard the interest of petitioner minor and pass order of injunction against respondent No. 4 having regard to the above. I am supported in the view which I have taken on interpretation of section 10(2) of the Employees' Provident Funds and Misc. Provisions Act, 1952 and also by judgments of High Court of Delhi in the case of Smt. *Om Wati* v. *Delhi Transport Corporation*, 1988 Labour and Industrial Cases 500 and also the recent judgment of the High Court of Gujarat in the case of *Lalitaben Bhanabhai d/o Bhanabhai Malabhai* v. *Laliben Bhanabhai w/o Bhanabhai Malabhai*, 1992 I Current Labour Reports 164."

(emphasis added)

23. In the case of Vishin N. Khanchandani and Another v. Vidya Lachmandas Khanchandani and Another MANU/SC/0509/2000 : (2000)6 SCC 724, the Apex Court

considered the effect of nomination under the Government Savings Certificate Act, 1959 and in particular Sections 6 to 8 thereof. The said Sections read thus:

"6. *Nomination by holders of savings certificates.*-

(1) **Notwithstanding anything contained in any law for the time being in force, or in any disposition, testamentary or otherwise in respect of any savings certificate, where a nomination made in the prescribed manner purports to confer on any person the right to receive payment of the sum for the time being due on the savings certificate on the death of the holder thereof and before the maturity of the certificate, or before the certificate having reached maturity has been discharged, the nominee shall, on the death of the holder of the savings certificate, become entitled to the savings certificate and to be paid the sum due thereon to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.**

(2) Any nomination referred to in sub-section (1) shall become void if the nominee predeceases, or where there are two or more nominees all the nominees predecease, the holder of the savings certificate making the nomination.

(3) Where the nominee is a minor, it shall be lawful for the holder of the savings certificate making the nomination to appoint in the prescribed manner any person to receive the sum due thereon in the event of his death during the minority of the nominee.

(4) A transfer of a savings certificate made in the prescribed manner shall automatically cancel a nomination previously made:

> Provided that where a savings certificate is held by or on behalf of any person as a pledgee or by way of security for any purpose, such holding shall not have the effect of cancelling a nomination but the right of the nominee shall be subject to the right of the person so holding it.

7. *Payment on death of holder.*-

(1) If the holder of a savings certificate dies and there is in force at the time of his death a nomination in favour of any person, payment of the sum due thereon shall be made to the nominee.

(2) Where the nominee is a minor, payment of the sum due thereon shall be made-

> (*a*) in any case where a person has been appointed to receive it under sub-section (3) of Section 6, to that person, and
>
> (*b*) where there is no such person, to any guardian of the property of the minor appointed by a competent court, or where no such guardian has been so appointed, to either parent of the minor, or where neither parent is alive, to any other guardian of the minor.

(3) Where the sum due on a savings certificate is payable to two or more

nominees, and either or any of them dies, the sum shall be paid to the surviving nominee or nominees.

(4) If a person dies and is at the time of his death the holder of a savings certificate and there is no nomination in force at the time of his death and probate of his will or letters of administration of his estate or a succession certificate granted under the Indian Succession Act, 1925, is not within three months of the death of the holder produced to the prescribed authority, then, if the sum due on the savings certificate does not exceed such limit as may be prescribed, the prescribed authority may pay the same to any person appearing to it to be entitled to receive the sum or to administer the estate of the deceased.

(5) Nothing contained in this section shall be deemed to require any person to receive payment of the sum due on a savings certificate before it has reached maturity or otherwise than in accordance with the terms of the savings certificate.

8. *Payment to be a full discharge.-*

(1) Any payment made in accordance with the foregoing provisions of this Act to a minor or to his parent or guardian or to a nominee or to any other person shall be a full discharge from all further liability in respect of the sum so paid.

(2) Nothing in sub-section (1) shall be deemed to preclude any executor or administrator or other representative of a deceased holder of a savings certificate from recovering from the person receiving the same under Section 7 the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

(3) Any creditor or claimant against the estate of a holder of a savings certificate may recover his debt or claim out of the sum paid under this Act to any person and remaining in his hands unadministered in the same manner and to the same extent as if the latter had obtained letters of administration to the estate of the deceased."

(emphasis added)

In Paragraphs 7 and 8 of the decision, the Apex Court observed thus-:

"**7. Mr. Sanjay K. Kaul, Senior Advocate appearing for the appellants submitted that Section 6 of the Act very unambiguously provides that notwithstanding anything contained in any law for the time being in force or in any disposition, testamentary or otherwise, in respect of any savings certificate where a nomination is made, the nominee shall, on the death of the holder of the savings certificate, become entitled to the savings certificate and to be paid the sum due thereon to the exclusion of all other persons.** Referring to sub-section (3) of Section 6, the learned counsel submitted that in case where the nominee is a minor, the holder of the savings certificate has a right to make the nomination to appoint in the prescribed manner any person to receive the sum due thereon in the event of his death during the minority of

the nominee. It is contended that if the intention was not to entitle the nominee to be paid and to retain the sum due on such National Savings Certificates, there was no necessity of making a provision as has been incorporated in sub-section (3) of Section 6. Section 7 was also relied upon to urge that after the death of the holder, the nominee becomes entitled to the payment of the sum due without there being any further obligation upon him. In support of such an argument further reliance was placed upon sub-sections (3) and (4) of Section 7. **He also tried to distinguish the verdict of this Court in *Sarbati Devi* v . *Usha Devi*** [MANU/SC/0231/1983 : (1984) 1 SCC 424 : 1984 SCC (Tax) 59] **by pointing out the difference of the language and phraseology in Section 6 of the Act and Section 39 of the Insurance Act. According to him the words, "on the death of the holder of the savings certificate, become entitled to the savings certificate and to be paid the sum due thereon to the exclusion of all other persons", appearing in Section 6 of the Act have not been incorporated in Section 39 of the Insurance Act suggesting that the legislature had intended to make the nominee absolute owner of the value of the certificates.**

8. The law in force in England on the position of a nominee who has been treated to be a third party in relation to a claim regarding insurance policy, is summarised in *Halsbury's Laws of England*(4th Edn.), Vol. 25, para 579 as under:

> "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 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 the insurers may pay the money to the third party and get a good discharge from him."
>
> (emphasis added)

In paragraph 13, the Apex Court proceeded to observe thus:

> "**13. In the light of what has been noticed hereinabove, it is apparent that though the language and phraseology of Section 6 of the Act is different from the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same.** The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the National Savings Certificates, to the nominee of the holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. **Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in *Sarbati Devi case*** [MANU/SC/0231/1983 : (1984) 1 SCC 424 : 1984 SCC (Tax) 59] **holds the field and is equally applicable to the nominee becoming entitled to the payment of the**

amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those in whose favour the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act."

(emphasis added)

24. In the case of Antonio Joao Fernandes v. The Assistant Provident Fund Commissioner and Others MANU/MH/0330/2010 : 2010(3) All MR 599, the learned Single Judge of this Court had an occasion to consider the provisions of Sub-section (2) of Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and in particular the meaning of the expression "vests" used in the said provisions. The learned Single Judge followed the view taken in the case of Nozer Gustad Commissariat.

25. Now we come to the decision of the Apex Court in the case of Ram Chander Talwar and Others v. Devender Kumar Talwar and Others MANU/SC/0833/2010 : (2010)10 SCC 671. The issue before the Apex Court was whether a nominee in the bank account held by the deceased can claim full rights over the money lying in the account to the exclusion of the legal heirs. Paragraphs 4 to 6 of the said decision read thus:

"**4.** Sub-section (2) of Section 45-ZA, reads as follows:

"45-ZA. * * *

(2) **Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the *right to receive* the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, *in relation to such deposit* to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner**."

(emphasis added)

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

6. We find that the High Court has rightly rejected the appellant's claim

relying upon the decision of this Court in *Vishin N. Khanchandani* v. *Vidya Lachmandas Khanchandani* [MANU/SC/0509/2000 : (2000) 6 SCC 724]. The provision under Section 6(1) of the Government Savings Certificates Act, 1959 is materially and substantially the same as the provision of Section 45-ZA(2) of the Banking Regulation Act, 1949, and the decision in *Vishin N. Khanchandani* [MANU/SC/0509/2000 : (2000) 6 SCC 724] applies with full force to the facts of this case."

(emphasis added)

26. Sub-section (2) of Section 45-ZA of the Banking Regulation Act, 1949 starts with a non-obstante clause which seeks to override any other law for the time being in force or any disposition whether testamentary or otherwise in respect of such deposit, where a nomination has been made in the prescribed manner. Though the word "vest" is not used in Sub-section (2) of Section 45-ZA, it provides that a nominee on the death of the sole depositor or as the case may be, on the death of all the depositors becomes entitled to all rights as the sole depositor in relation to such deposit to the exclusion of all other persons. The Apex Court held that the Banking Regulation Act, 1949 is no way concerned with the question of succession and, therefore, all the monies receivable by the nominee by virtue of Sub-section (2) of Section 45-ZA would form part of the estate of the deceased depositor and would be governed by the law of succession by which the depositor was governed. Though Sub-section (2) of Section 45-ZA seeks to override any other law for the time being in force or any disposition, whether testamentary or otherwise, the Apex Court held that the nominee does not become the owner of the money lying in the account.

27. Coming back to the decision in the case of Vishin N. Khanchandani and Another, as stated earlier, the Apex Court interpreted Section 6 of the Government Savings Certificates Act, 1959. We have already quoted Section 6 of the said Act. As pointed out earlier, even Sub-section (1) of Section 6 starts with a similar non-obstante clause. The submission of the Appellant before the Apex Court which is noted in Paragraph 6 based on the non-obstante clause, was that Section 6 of the Government Savings Certificates Act, 1959 was intended to make the nominee the absolute owner of the value of the saving certificates. In Paragraphs 10 and 11 of the said decision, the Apex Court noted the difference between Section 39 of the Life Insurance Act, 1938 and Section 6 of the Government Savings Certificates Act, 1959 and noted that Section 6 starts with a non-obstante clause as distinguished from Section 39 of the Life Insurance Act. Ultimately, in Paragraph 13, the Apex Court observed that though the phraseology used in Section 39 of the Life Insurance Act, 1938 is different from the phraseology used in Section 6 of the Government Savings Certificates Act, 1959, the effect of both the provisions is the same and that is how in Paragraph 13 in the case of Vishin N. Khanchandani and Another, the Apex Court held thus:-

"**13. In the light of what has been noticed hereinabove, it is apparent that though the language and phraseology of Section 6 of the Act is different from the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the National Savings Certificates, to the nominee of the holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon**

all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in *Sarbati Devi case* [MANU/SC/0231/1983 : (1984) 1 SCC 424 : 1984 SCC (Tax) 59] holds the field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those in whose favour the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act."

(emphasis added)

28. Now, we may make a reference to Sections 109A and 109B of the Companies Act. Sub-section (3) of Section 109A quoted earlier is on par with Sub-section (1) of Section 6 of the Government Savings Certificates Act, 1959 and Sub-section (2) of Section 45-ZA of the Banking Regulation Act, 1949. There is no material difference between Sub-section (3) of Section 109A of the Companies Act and Sub-section (1) of Section 6 of the Government Savings Certificates Act, 1959 as well as Sub-section (2) of Section 45-ZA of the Banking Regulation Act, 1949 which have been interpreted by the Apex Court as aforesaid. The said provisions start with non-obstante clause and seek to provide that nomination will override the disposition whether testamentary or otherwise. The said provisions seek to exclude all other persons except the nominee.

29. Section 109B of the Companies Act does not advance the case of the Appellants any further. Section 109B does not suggest that on nomination being made by a deceased shareholder of a Company, his nominee becomes the owner of the shares to the exclusion of all other legal heirs.

30. The learned counsel appearing for the Respondent relied upon a decision of the Apex Court in the case of Gajanan and Others v. Seth Brindaban MANU/SC/0409/1970 : 1970(2) SCC 360 and in particular Paragraph 15 thereof which reads thus:

"**15.** There is also another aspect which may legitimately be kept in view. **People in arranging their affairs are entitled to rely on a decision of the highest court which appears to have prevailed for considerable length of time and it would require some exceptional reason to justify its reversal when such reversal is likely to create serious embarrassment for those who had acted on the faith of what seemed to be the settled law. Where the meaning of a statute is ambiguous and capable of more interpretations than one, and one view accepted by the highest court has stood for a long period during which many transactions such as dealings in property and making of contracts have taken place on the faith of that interpretation the court would ordinarily be reluctant to put upon it a different interpretation which would materially affect those transactions**."

(emphasis added)

31. The learned counsel appearing for the Appellants in Appeal No. 313 of 2015 relied upon another decision of the Apex Court in the case of State of Himachal Pradesh and Others v. Ashwani Kumar and Others MANU/SC/1352/2015 : 2015(12)

Scale 619. Paragraph 22 of the said decision relied upon reads thus:

> "22. We make it clear that to maintain certainty in the judicial decision, we have to restrain from interfering with the decision of the High Court which has stood for a long period on the principle of stare decisis. However, the said principle will be applicable where the meaning of the Statute is ambiguous and capable of more interpretation than one. In the instant case, the provision of the Act/Statute is very clear and, therefore, principle of stare decisis is of no help to the Respondents."

32. In the present case, we find that the provisions of Section 109A and in particular Sub-section (3) thereof are not materially different from the provisions of Sub-section (1) of Section 6 of the Government Savings Certificates Act, 1959. Sub-section (2) of Section 45-ZA of the Banking Regulation Act, 1949 is also similar to Sub-section (2) of Section 109B. The same is the case with Bye-law 9.11 of the Depositories Act, 1996. Even assuming that the format of the nomination requires attestation as required by a will under the Indian Succession Act, 1925, the nomination does not become a testamentary disposition. Therefore, the decision of the Apex Court in the case of State of Himachal Pradesh and Others v. Ashwani Kumar and Others is of no help to the Appellants.

33. Reliance is placed on Sub-Section (2) of Section 58 of the Indian Succession Act, 1925 which reads thus:

> "58. General application of Part.-(1) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by Section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina; nor shall they apply to any will made before the first day of January, 1866.
>
> (2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of [India] applicable to all cases of testamentary succession."

Sections 109A was not on the Statute Book when the Indian Succession Act, 1925 came into force. We do not see how the said provision will help the Appellants.

34. The provisions relating to nominations under the various Enactments have been consistently interpreted by the Apex Court by holding that the nominee does not get absolute title to the property subject matter of the nomination. The reason is by its very nature, when a share holder or a deposit holder or an insurance policy holder or a member of a Co-operative Society makes a nomination during his life time, he does not transfer his interest in favour of the nominee. It is always held that the nomination does not override the law in relation to testamentary or intestate succession. The provisions regarding nomination are made with a view to ensure that the estate or the rights of the deceased subject matter of the nomination are protected till the legal representatives of the deceased take appropriate steps. None of the provisions of the aforesaid Statutes providing for nominations deal with the succession, testamentary or non-testamentary. As observed by the Apex Court, the legislative intention is not to provide a third kind of succession. In Sarbati Devi, the Apex Court held in paragraph 5 which reads thus:

> " .....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 para 16 of the decision of the Delhi High Court in *Uma Sehgal case* [MANU/DE/0337/1981 : AIR 1982 Del 36 : ILR (1981) 2 Del 315]. 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 registered."**

(emphasis added)

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

35. Considering the consistent view taken by the Apex Court while interpreting the provisions relating to nominations under various Statutes (including the view in the recent decision in the case of Indrani Wahi), there is no reason to make a departure from the consistent view. The provisions of the Companies Act including Sections 109A and 109B, in the light of the object of the said Enactment, do not warrant any such departure. The so called vesting under Section 109A does not create a third mode of succession. It is not intended to create a third mode of succession. The Companies Act has nothing to do with the law of succession. We have gone through every decision and material relied upon by the Appellants to which we have not made a specific reference in this Judgment. We hold that there was no reason to take a view which is contrary to the view taken in the long line of the decisions of the Apex Court on interpretation of provisions regarding nominations. Hence, the view taken in Kokate's case is not correct. We answer the first question in the negative and the third question in the affirmative. The second question is answered accordingly.

36. Some argument was canvassed in Appeal No. 313 of 2015 that the learned Single Judge has decided the question at the time of hearing of the Notice of Motion which was not a question of jurisdiction. From the impugned order, it appears that the

Appellants in Appeal No. 313 of 2015 were fully aware as to the controversy before the learned Single Judge and in fact, the submissions have been made on merits of the issue. Hence, the said contention cannot be accepted.

37. As regards the Appeal No. 311 of 2015, it arises out of a Testamentary Petition. The Appellant appearing in person is right in contending that the issue of the effect of nomination is irrelevant for deciding the Application for grant of probate inasmuch as it is well settled that a testamentary Court dealing with the issue of grant of probate or letters of administration has no jurisdiction to decide the issue as regards the title of the deceased testator to his assets. Therefore, the issue of effect of nomination could not have been gone into in the Appeal arising out of the Testamentary Petition filed by the Appellant in Appeal No. 311 of 2015.

38. Hence, we pass the following order:

ORDER :

"(a) Appeal No. 313 of 2015 is hereby dismissed with no order as to costs;

(b) We make it clear that the impugned order stands confirmed as far as the Suit No. 503 of 2014 is concerned;

(c) The impugned order stands quashed and set aside insofar as the Testamentary Petition No. 457 of 2014 is concerned only on the ground that the issue of the effect of nomination made by the testator cannot be gone into by the Testamentary Court in the probate proceedings. The Appeal No. 311 of 2015 is accordingly allowed with no order as to costs.

(d) Pending Notices of Motion, if any, in both the Appeals do not survive and the same are disposed of."

39. After the judgment is pronounced, the learned counsel appearing for the Appellants in Appeal No. 313 of 2015 prays for continuation of the ad-interim or interim order which is operative in the Appeal.

40. Considering the nature of controversy, we extend the ad-interim or interim order which is operative till today by a period of 10 weeks from today.