

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Irfan Saadat Khan and
Yousuf Ali Sayeed, JJ

HCA No. 28 of 2015

Appellants : (1) Sabira Khatoon
(2) Shagufta Malik
(3) Zahid Malik
(4) Samina
(5) Rubina,
Through their attorney, the
Appellant No.3, in person.

Respondents : (1) Federation of Pakistan,
(2) Director General National Saving
Central Islamabad,
(3) Director, National Saving
Centre, Karachi.
Through, Khilji Bilal Aziz, DAG

Date of hearing : 04.11.2020.

JUDGMENT

YOUSUF ALI SAYEED, J - Through Suit Number 157 of 2007 (the “**Suit**”) filed before this Court on the Original Side, the Appellants had advanced a claim alleging that the Appellant No.1 and her late husband, Abdul Malik (the “**Deceased**”), had purchased Regular Income Certificates (“**RICs**”) worth Rs.1 crore each in their respective names on the same date in the year 1998, which had been in the custody of the Deceased, but after his demise on 05.04.1999, could not be traced out, due to which a report was ultimately lodged at P.S Baloch Colony as to the loss. Thereafter, the Appellant No.1 moved various applications to the relevant functionaries of the Respondents seeking duplicate certificates and several legal notices were also addressed by counsel on the subject, as well as in respect of certain Special Savings Certificates (“**SSCs**”) of Rs. 20 Lacs that later came to be unearthed, but to no avail, hence recourse to the Suit seeking recovery of a sum of Rs.22,150,000/-.

2. The Suit culminated in dismissal vide Judgment dated 04.12.2014, with the learned single Judge finding that the Appellants had failed to adduce any cogent evidence whatsoever to support the issue framed as to their entitlement in the face of the Respondents denial of the claim, thus had failed to discharge the burden of proving their case. Undeterred by this finding, the Appellants, being 4 out of the 5 persons arrayed as plaintiffs have seen fit to prefer the captioned Appeal, whereas one of the heirs of the Deceased, namely Anjum Naheed, who had been arrayed as the Plaintiff No.2 but not signed the plaint, has been joined as the Respondent No.4.
3. As in the Suit, the Appellant No.3, namely Zahid Malik, appeared in person on his own behalf and as the attorney of the other Appellants, and in fact, the Memo of Appeal bears his solitary signature and is supported by his sole affidavit, sworn in that capacity. Proceeding with the matter, the Appellant No.3 read through the impugned Judgment in its entirety while broadly contending that the learned single Judge had failed to properly appreciate the merits of the case and the entitlement of the Appellants, hence had erred in dismissing the Suit.
4. Conversely, the learned DAG submitted that the impugned Judgment represented a correct appraisal of the case and submitted that the Suit and this Appeal constituted an abuse of process, warranting dismissal with exemplary costs.
5. When examining the merits of the matter, what is striking is that the applications and legal notices that had been addressed by or on behalf of the Appellants were completely bereft of relevant particulars. Indeed, the first legal notice dated 25.06.2001 addressed in the matter on behalf of the Appellants to the Respondent No.3 proceeded in the following terms:

“The Director,
National Saving Centre,
National Saving House,
Shahrah-e-Faisal, Karachi

Dear Sir,

Under instructions and on behalf of all legal heirs of Late Abdul Malik son of Abdul Khaliq, holder of NIC No.512-41-231836, resident of R-21, Block-9, Karachi Administration Employees Co-Operative Housing Society, Karachi, I address you as under:-

1. That on or about 10.01.1998 Abdul Malik son of Abdul Khaliq deposited a sum of Rs.1,00,00,000/- (Rupees One Crore) in the National Saving Centre, Sharah-e-Faisal, Karachi for investment in one of the Saving Schemes and certificates were issued to him which he kept in his custody.
2. That on or about 05.04.1999 Abdul Malik died at Karachi.
3. That his legal heirs inspite of diligent search could not find the certificates issued to him for the face value of Rs.1,00,00,000/- by the National Saving Centre.
4. That on 04.06.2001 Mr. Zahid Malik reported the loss of certificates of his deceased father and that of his mother Sabira Khatoon to Police Station, Baloch Colony, Karachi and a copy of Station Diary Entry No.31 dated 04.06.2001 of Police Station Baloch Colony is submitted and marked “A”.

Under the aforesaid circumstances it is requested that all the requisite particulars of certificates purchased by Late Abdul Malik with the amount of interest/profit accrued thereon may please be provided so that the Legal heirs of deceased Abdul Malik may file an application in the Honourable High Court of Sindh for grant of succession certificate in respect of the Certificates purchased by him on or about 10.01.1998 and the interest/profit accrued thereon till date. A copy of NIC and death certificate of Abdul Malik are submitted and marked “B” and “C”.

6. As is evident from the very face of the notice, the scope thereof was confined to the certificates of Rs.1 crore said to have belonged to the deceased, Abdul Malik, with no further claim being advanced. That notice was promptly replied to by the Respondent No.3 on 30.06.2001, whereby the Appellant No.1 was called upon to furnish proper particulars, including the correct name of the scheme and registration number, as follows:

“Dear Sir,

Reference your Letter dated 25.06.2001 and subsequent telephonic talk with you in the matter referred therein and to state that it is practically not possible for us to locate investment of the deceased Abdul Malik at National Savings Centre, Saving House Karachi unless scheme are known in which invested by deceased. This was informed to Mr. Zahid Malik who met with the undersigned a few days back in this regard. I have advised to Mr. Zahid Malik to let us know name of the scheme and Registration number in which the money have invested by deceased, to take further necessary action.”

7. Thereafter, another legal notice dated 23.11.2011 was apparently addressed to the Respondent No.2, which was similarly couched in vague terms, hence was replied to vide letter dated 08.01.2002, stating:

“Dear Sir,

Kindly refer to your letter No. LTI/14/2/2001 dated 23.11.2001, regarding the above subject.

2. Previously, Mst. Sabira Khatoon Wd/o Late Abdul Malik R/o R-21, K.A.E.C.H.S, Karachi had approached through lawyer Abdul Ghafoor Khan for tracing out the assets of her late husband Abdul Malik without showing/indicating name of National Savings, Scheme, Registration number, certificate number or any account number in which her husband had invested money at National Savings Centre, Savings House, Karachi.

3. Later on, her son namely Zahid Malik also visited the Regional Directorate of National Savings, Karachi and the Officer Incharge of the Centre extended full co-operation to him for locating/tracing the assets of late Abdul Malik, and accordingly the learned lawyer and Mst. Sabira Khatoon, vide Regional Directorate of National Savings, Karachi letter No.1(23)DNS(K)SCH-II/2001-3372 dated 30.06.2001 were accordingly informed.

4. In the absence of the requisite information, it is impossible for the staff of the National Savings Centre to trace/locate the assets of the client. It is, therefore, requested that the name of the Scheme(s), Registration No./Certificate No. and date of investment may kindly be provided, so as to find out the assets, if any, of late Abdul Malik from the record of the National Savings Centre.”

8. In response, a further request was made through counsel for the relevant record for a specified period (i.e. 11-1998 to 3-1999) to be checked, which exercise was also apparently carried out in February 2002, but without any trace of the alleged investment being uncovered.
9. Other than an unsuccessful approach to the Federal Investigation Agency in the year 2004, the matter then otherwise remained in limbo until 12.07.2006, when yet another legal notice was addressed to the Respondent No.2, where for the first time the claim on account of the RIC's was extended to Rs. 2 crore, with the deceased said to have been the purchaser and the relevant date being stated as 14.12.2998. However, yet again, no particulars of RIC's were given, but another claim that was apparently raised for the first time at that point was for payment of Rs.21,50,000/- against the SSCs, stemming from an acknowledgment slip dated 15.12.1998 said to have been found by the Appellants during their search for the lost RICs, which, per the Appellants, allegedly showed that SSCs of Rs. 20 Lacs had been received from the deceased for purpose of issuance of a Government Cheque.
10. It is only upon the Suit being filed that the RICs somehow came to be specified for the first time in the plaint as bearing Nos. P-67230361 (One packet of One Hundred Certificates) and Q-67230371 (One Packet of One Hundred Certificates).
11. In the written statement that was filed, the Respondents unequivocally denied the claim, stating that the Officer in charge, National Saving Centre, Shahrah-e-Faisal, Karachi had been unable to trace out the investments in the shape of the RICs, whereas the SSC's had already been encashed. In that regard, while accepting that the Deceased had invested a sum of Rs.2 million in SSCs

under registration No.40631 dated 3.5.1997, it was stated that the family members had submitted the SSCs for encashment and a Government cheque No.B693999, dated 22.12.1998 amounting to Rs.19,50,000/- was prepared for payment, but was not handed over as the presence of the investor or his authority letter was required, and the cheque was later cancelled due to non-compliance with those requirements. However, after the demise of the Deceased, Sabira Khatoon, being the nominee, had visited the Centre along with the original SSCs to seek encashment, and the investment of Rs.2 million was transferred in her name and she nominated Zahid Malik as her nominee under registration No.55901 dated 23.09.1999 after compliance of formalities as per Rules. The amount of 4th profit and 5th profit of Rs.1,44,000/- each was paid to Mr. Zahid Malik on 24.09.1999 and on 30.11.1999 respectively whereas 6th profit of Rs.1,80,000/- and an amount of Rs.2,000,000/- was paid to Plaintiff No .1 Sabira Khatoon on 09.05.2000 through Government cheque dated 08.05.2000 and it was cleared to her account through the Allied Bank Limited, Karachi, Administrative Branch.

12. After conclusion of the evidence, in the absence of any cogent material being brought on record, an Application bearing CMA No.8360 of 2011 was nonetheless presented on behalf of the Appellants on 06.08.2011, seeking verification of the RICs bearing Sr. No. P-67230361 to P-67230460 and Q-67230471 to Q-67230570, as well as the SSCs bearing No. JA-192059 to JA-192078, which was allowed by consent vide an Order made on 09.07.2012. However the report dated 21.07.2012 which then came to the fore only served to demonstrate the falsity of the Appellant's claim in as much as it reiterated the encashment of the SSC's, as disclosed in the written statement, and furthermore, as regards the RIC's, disclosed that those numbers did not exist as RICs of Series P & Q had not even been issued by the Government.

13. The burden of proof, as correctly observed by the learned single Judge, rested on the Appellants. However, as noted, only the Affidavit-in-Evidence of Zahid Malik was filed, who when cross-examined on the aspect of the purchase and availability of funds for that purpose, had stated that:

“My father had paid cash amount to the National Saving Centre for the purchase of saving certificates to the extent of Rs.2 crores. My father had withdrawn about Rs.25,00,000/ from the bank and the remaining amounts were lying at the house and the same was paid to the N.S.C.”

“It is correct that I have not filed the copy of the Income Tax return of my late father. I have not given the details of the Bank account numbers of my father”

“I have also not filed the copy of the bank statement of my father to show the withdrawal of the amounts. It is correct that I have not filed the copies of those certificates for which I claim the amounts.”

It is correct that in the police report exhibit P/2, the numbers of saving certificates are not mentioned.”

“It is correct that my mother, the widow of late Abdul Malik had received a Govt; cheque No. 825076 dated 8.5.2000 for Rs.20,00000/-”

14. Needless to say, such an explanation did not find favour with the learned single Judge, who held that the alleged acquisition and loss of the RICs had not been properly explained and the claim of Rs. 2 Crores in ready cash being available in the home for purpose of such acquisition was implausible, particularly when the Appellants had not produced any independent witness to corroborate the fragile evidence of the Appellant No.3, and even the bank account number and name of the bank from where the amount of Rs.25,00,000/- was said to have been withdrawn by the Deceased Abdul Malik at the time of alleged purchase had not been disclosed. It was also observed by the learned single Judge that while under cross examination encashment of the SCC's had

Appellant No.3 under cross examination, it had subsequently been admitted by him that Sabira Khatoon had received cheque No.825076 on 08.05.2000 in the sum of Rs.2 million, which was reckoned by the learned single Judge to have been received by her on account of the SSCs in her capacity as the nominee of the Deceased.

15. When the findings of the learned single Judge are examined in light of the record, with it being borne in mind that neither the original certificates nor copies thereof had been produced at trial and the Appellants had not even been able to otherwise produce a scintilla of evidence to demonstrate payment or even proof that sufficient funds were available to have made an investment in that sum, it is manifest that the Appellants had completely failed to establish their claim, which was rightly held by the learned single Judge to be devoid of merit. As such, we are of the view that the learned single Judge ruled correctly in dismissing the Suit, but being undeterred by the finding recorded against them and without any cogent ground to be canvassed, the Appellants have nonetheless seen fit to launch yet another vexatious proceeding so as to continue to flog the dead horse. Moreover, it transpires that the Appeal seeks to impugn the judgment in the absence of the decree, hence is even otherwise not properly constituted. Under the circumstances the Appeal is hereby dismissed. There is no order as to costs.

JUDGE

JUDGE

Karachi
Dated _____