

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
C.P. No.D-483 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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Hearing

1. For orders on office objection No.14 & 18
2. For hearing of CMA No.2056 of 2021
3. For hearing of main case

18.06.2021

Raja Shabir Hussain, advocate for the petitioner

Mr. Khiliji Bilal, Assistant Attorney General, Pakistan along with Mr. S.M. Mumtaz-ul-Hassan, National Savings Officer [NSO], NSC, North Karachi.

Pursuant to issuance of notice representative of National Saving Centre (NSC) is in attendance and needs time to file comments. However, on perusal of the record we are of the view that this petition is per-se not maintainable inasmuch as the Petitioner despite pendency of SMA No. 856/2020 before the concerned District Judge between the legal heirs is seeking a writ against NSC for release of 50% of the amount lying in Behbood Certificates in the name of deceased Mst. Rafique-un-Nisa on the ground that the amount was invested by the Petitioner and she is the nominee in the records.

The question that whether a nominee in any certificate issued by NSC can claim the amount after demise of a person in whose name the said certificate has been issued without getting a proper succession certificate in terms of section 372 of the Succession Act, 1925 now stands decided in the case of ***Buhsra Farooq v Shabana Rafiq*** (2002 CLC 1502); followed in ***Muhammad Shahid Farooq v Jamshed Ali Khan*** (2017 CLC 1227) by a learned Single Judge of this Court in the following terms:

16. I am conscious that one may be interested in securing somebody in the event of his death for which he may within his right of ownership of his assets even by investment, purchasing properties in name of such person but he should not be deceived in taking such decision nor he should be put under any mistake in exercising such decision particularly where heading him to such 'action' legally shall not sustain. On the other hand, he must be informed that his active act of 'nominating one' shall not make such 'nominee' as owner but nominee shall only earn a status of 'trustee' (AMEEN) which too for distributing all collected/received tarka among the legal heirs without taking a single penny for such services even. I would also add that NSC may develop mechanism for development of its business but not by 'giving a meaning' to 'nominee' which otherwise shall not stand legally. Such practice or procedure may attract the meaning of 'deception' which an institution (NSC) is not supposed to adopt even in name of earning business. Besides, that 'family' normally consists of 'widow', children and even old aged parents who, on opening of succession, become sharers in the certificate's amount despite that representative of NSC has failed in pointing out any provision (rule etc.) of NSC which ensures that amount, delivered to nominee, stands distributed among the legal heirs as per their entitlement. It would be worth to add that an amount of minor legal heir cannot be enjoyed/used by a blood-relation even except under proper guardianship certificate yet the NSC claims to have discharged its obligations only by taking a receipt from 'nominee'

without an inquiry about survived legal heirs of holder of certificate as was done in the instant case that nominee received the entire amount without any knowledge, notice or consent of legal heirs of the deceased who (legal heirs) still have not received their share(s). Thus, faulty rather illegal rules prima facie have resulted in giving an 'undue advantage' to nominee whereby he (nominee) can deprive the legal heirs of their lawful right in 'tarka'.

17. The above discussion leaves nothing ambiguous that said Rules are in direct conflict with substantial laws/rights hence cannot be allowed to continue. Thus, NSC or any other financial institutions cannot frame its Rules or form(s) in a manner or fashion which otherwise results in depriving the rightful persons even by taking consent of purchaser in shape of 'nomination' hence such rules are illegal, void and against the substantial rights even cannot be allowed to continue holding the field and should be struck-off or least be amended in a manner so as to bring the same in conformity with settled definition of 'nominee' keeping in view of the law of inheritance hence should include:-

(i) a mechanism through which the holder of certificate completely understands that 'nomination' shall not earn any other right in him except that of distribution of amount among the legal heirs;

(ii) a mechanism through which the 'nominee' consents to discharge his obligations as nominee, as per decided principle by honourable Apex Court.

(iii) a mechanism through which the details of 'legal heirs' comes to knowledge of National Saving Center (NSC) and other financial institutions, which however shall not prejudice the right of any other person who subsequent to purchase of certificates, earns status of legal heirs;

(iv) a mechanism whereby NSC and Other financial institutions ensure satisfaction of distribution of amount among legal heirs even through 'nominee';

(v) a mechanism whereby NSC and other financial institutions ensure that amount of minor legal heirs is either invested in his name or allowed to be received under proper guardianship certificate;

(vi) NSC and other financial institutions shall ensure that list of legal heirs is submitted by the person investing any amount in profitable scheme;

(vii) NSC and other financial institutions shall ensure that prescribed form(s) do contain relevant column(s)/information(s) with regard to faith or sect of purchaser/holder of certificate so as to deal with applicable affair(s) within light of personal faith or sect;

(viii) With regard to already invested amount and nomination made, the NSC and other financial institutions shall ensure that holder of certificates be informed about meaning and purpose of 'nominee' and a written consent for continuity thereof be obtained from them and nominee (s);

(ix) At the time of investments in any scheme, NSC shall offer to depositor to transfer interest on maturity automatically to his account;

(x) All payments shall be made through cross-cheque;

(xi) All centers shall be computerized and shall be connected with each other and all facilities of modern technology including ATM shall be provided;

(xii) On maturity profit with principal shall be transferred automatically without any delay in the account of depositor.

Accordingly, the petition appears to be misconceived and is accordingly dismissed with pending applications. However, the petitioner may seek her remedy before the appropriate court having jurisdiction in the matter.

JUDGE

JUDGE

Qurban/PA*