

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 14TH DAY OF FEBRUARY 2023 / 25TH MAGHA, 1944

WP(C) NO. 2665 OF 2023

PETITIONER/S:

- 1 LALITHAMBIKA
AGED 60 YEARS
W/O LATE SASIDHARAN PILLAI, SALINIBHAVAN,
AAYOOR KOLLAM -691533.
- 2 SALINI
AGED 41 YEARS
D/O LATE SASIDHARAN PILLAI, SALINI BHAVAN, AAYOOR
KOLLAM -691 533.
- 3 SHYAMLAL
AGED 39 YEARS
S/O LATE SASIDHARAN PILLAI, SALINI BHAVAN, AAYOOR
KOLLAM - 691 533.
BY ADV PRAVEEN K. JOY

RESPONDENT/S:

- 1 GRIEVANCE REDRESSAL COMMITTEE
STATE BANK OF INDIA, CHADAYAMANGALAM BRANCH,
CHADAYAMANGALAM, KOLLAM PIN-691 534.
- 2 STATE BANK OF INDIA
CHADAYAMANGALAM BRANCH, CHADAYAMANGALAM,
KOLLAM PIN-691 534, REP BY ITS BRANCH MANAGER.
- 3 THE BRANCH MANAGER
STATE BANK OF INDIA, CHADAYAMANGALAM BRANCH,
CHADAYAMANGALAM, KOLLAM PIN-691 534.
BY ADVS.
SHRI.JITHESH MENON, SC, SBI
SRI. JAWAHAR JOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.02.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

SHAJI P. CHALY, J.

W.P.(C). No. 2665 of 2023

Dated this the 14th day of February, 2023.

JUDGMENT

A short but interesting question emerging for consideration in this writ petition is whether a joint locker hirer is liable to secure a letter of administration or succession in order to operate the locker in the event of the death of one of the hirers.

2. Brief material facts for the disposal of the writ petition are summarised as follows:

The first petitioner is the wife of late Sasidharan Pillai and petitioners 2 and 3 are their daughter and son. The first petitioner along with late Sasidharan Pillai, have hired a locker jointly with locker No.26 in the State Bank of India, Chadayamangalam Branch, Kollam District. It is the case of the petitioners that the hirers are keeping their valuables/gold ornaments in the said locker. Sri. Sasidharan Pillai died on 31.07.2022, evident from Exhibit P1 death certificate dated 08.08.2022. According to the petitioners, the death of Sasidharan Pillai was intimated to the Bank on time; and the sole legal heirs of Sasidharan Pillai are the petitioners.

3. Anyhow, after the death of Sasidharan Pillai, the first

petitioner approached the Bank to permit her to operate or open the locker. However, the request was declined. Later, the first petitioner was intimated, as per Exhibit P3 letter dated 04.01.2023 by the Branch Manager, respondent No.3, that she has to secure necessary proof of legal representation in the form of Probate or Letters of Administration.

4. The case of the petitioners is that since the first petitioner is a joint hirer to operate the locker, the stand adopted by respondent Nos. 2 and 3 are illegal and arbitrary. It is also the case of the petitioner that during the lifetime of Sasidharan Pillai, the joint hirers were permitted to operate the locker independently and there is no requirement at all under the contract executed by and between the parties that the locker could be operated jointly only.

5. It is further pointed out that this question was considered by this Court in **Shobha Gopalakrishnan v. State of Kerala** [2019 (1) KLT 801], wherein one of the joint hirers of a locker, on production of a death certificate, was directed to permit to operate the locker. It is also contended that the stand adopted by the respondent Bank is against the settled principles of law and the policies and guidelines issued by the Reserve Bank of India.

6. On the other hand, respondent Nos. 2 and 3 have filed a joint counter affidavit, justifying the stand adopted in Exhibit P3 letter dated 04.01.2023. Along with the same, a circular and

revised guidelines are also produced as Exhibits R2(a) and R2(b) dated 18.08.2021 and 20.01.2022 respectively, and relying upon the same, the learned Standing Counsel has advanced arguments that the Bank was right in insisting for Probate or letter of administration from the petitioner.

7. It is further pointed out that by virtue of Section 29 of the Administrators-General Act, 1963, the petitioner is at liberty to secure necessary letter of administration or to resort to the provisions of the Indian Succession Act and secure necessary decree for succession to the property of the deceased Sasidharan Pillai.

8. I have heard the learned counsel for the petitioner Sri. Praveen K. Joy and the learned Standing Counsel for the Bank Sri. Jawahar Jose, and perused the pleadings and material on record.

9. In my considered opinion, when the first petitioner and her husband were joint hirers of a locker and they were permitted to operate the locker independently during the lifetime of the husband; the first petitioner is entitled, as of right, to operate the locker, after the death of her husband. It is equally important to note that the first petitioner as well as her husband were permitted to operate the joint locker independent of each other during the lifetime of Sasidharan Pillai, and the same legal position continued after the death of Sasidharan Pillai.

10. However, the learned Standing Counsel for the Bank has invited my attention to Exhibit R2(a) circular dated 18.08.2021 issued by the Reserve Bank of India dealing with locker allotment; infrastructure and securities standards; locker operations; nomination facility and settlement of claims etc. On a perusal of Exhibit R2(a), I find that the said circular only deals with nomination facility as per clause 5.1, which reads thus:

“5.1 Nomination Facility

5.1.1 The banks shall offer nomination facility in case of safe deposit lockers and safe custody of articles, in accordance with the provisions of section 45-ZC to 45-ZF of the Banking Regulation Act, 1949 and Banking Companies (Nomination) Rules, 1985/Co-operative Banks (Nomination) Rules, 1985. In case the nominee is a minor, the same procedure as prescribed for the bank accounts shall be followed by the banks. A passport size photo of the nominee attested by the customer may be obtained from the customers, at his/her option and preserved in the records.

5.1.2 For the various Forms (Forms SC1, SC2 and SC3 for Articles left in Safe Custody and Forms SL1, SL1A, SL2, SL3 and SL3A for Safety Lockers) prescribed under Banking Companies (Nomination) Rules, 1985/Co-operative Banks (Nomination) Rules, 1985, only Thumb-impression(s) shall be required to be attested by two witnesses. Signatures of the account holders need not be attested by witnesses.

5.1.3 Banks shall have appropriate systems and procedures in place to register the nomination, cancellation and / or variation of the nomination, in their books, made by the locker hirers.

5.1.4 Banks shall devise a proper system of acknowledging the receipt of duly completed form of nomination, cancellation and / or

variation of the nomination. Such acknowledgement shall be given to all the customers irrespective of whether the same is demanded by the customers or not.”

11. Clause 5.2 of the circular deals with 'Settlement of Claims in case of death of a Customer'. Clause 5.2.3 specifies that in order to ensure that the articles left in safe custody and contents of lockers are returned to the genuine nominee, as also to verify the proof of death, banks shall devise their own claim formats, in terms of applicable laws and regulatory guidelines.

12. Clause 5.2.4 makes the situation more clear that a timeline is issued for tackling the situation of a nominee operating a locker, which states that the Banks shall settle the claims in respect of deceased locker hirers and shall release contents of the locker to survivor(s) nominee(s), as the case may be, within a period not exceeding 15 days from the date of receipt of the claim subject to the production of proof of death of the depositor and suitable identification of the claimant(s) with reference to nomination, to the bank's satisfaction.

13. Therefore, in my considered opinion, the said provisions contained under the circular is dealing with a situation only where the locker is permitted to be operated by a nominee after the death of the hirers. Anyhow, clause 5.3.6 of the said circular specifies that in cases where the deceased locker hirer had not made any

nomination or where the joint hirers had not given any mandate that the access may be given to one or more of the survivors by a clear survivorship clause, banks shall adopt a Board approved policy to facilitate access to legal heir(s)/legal representative of the deceased locker hirer, and in such cases, the banks were directed to take note of the instructions contained under para 5.3.2. dealing with the instructions regarding due care and caution in establishing the identity of the survivor(s)/nominee(s).

14. Therefore, it can be seen that the contention advanced by the learned Standing Counsel for the Bank, relying upon the said circular, has no basis or foundation to arrive at a conclusion that a joint locker hirer is also to follow the procedure prescribed for tackling a situation of granting permission to the nominee of the hirer or joint hirer of a locker.

15. The learned Standing Counsel for the Bank has also relied upon Exhibit R2(b) guidelines issued by the Bank. Clause 10.1 deals with access to Safe Deposit Lockers/Return of Safe Custody Articles to Nominee(s)/Survivor(s), which reads thus:

10.1 Access to Safe Deposit Lockers/Return of Safe Custody Articles to Nominee(s)/ Survivor(s):

a) If the sole locker hirer nominates a person, in the event of the death of the sole locker hirer, branch shall allow access of the locker and liberty to remove the contents of the locker to such nominee after verification of the death certificate, satisfying the identity and genuineness of such individual and after taking an inventory in the prescribed manner.

b) In case the locker was hired jointly with instructions to operate it under joint signatures and the locker hirers nominate one or more person(s) as nominee(s), in the event of death of any of the locker hirers, the branch shall permit access to the locker and the liberty to remove the contents jointly to the survivor(s) and the nominee(s) after taking an inventory in the prescribed manner.

c) In case the locker was hired jointly with survivorship clause and the hirers instructed that access to the locker should be given over to 'either or survivor' anyone or Survivor', former or survivor or according to any other survivorship clause permissible under the provisions of Banking Regulation Act, 1949 branch shall follow the mandate in the event of the death of one or more of the joint locker hirers.

d) However, Branch should take the following precautions before handing over the contents:

i) Branch should exercise due care and caution in establishing the identity of the survivor(s) nominee(s) and the fact of death of the locker hirer by obtaining appropriate documentary evidence. The genuineness of documents must be ensured.

ii) Branch should make diligent efforts to find out if there is any order from a competent court restraining the branch from giving access to the locker of the deceased, and

iii) Branch should make it clear to the survivor(s)/nominee(s) that access to locker/ safe custody articles is given to them only as a trustee of the legal heirs of the deceased locker hirer i.e., such access given to them shall not affect the rights or claims which any person may have against, the survivor(s)/nominee(s) to whom the access is given.

v) Branch shall ensure that the contents of locker, when sought to be removed on behalf of a minor nominee, are handed over to a person who is, in law, competent to receive the articles on behalf of such minor. Further Branch shall prepare an inventory of the articles in the presence of two independent witnesses, one officer

of the bank who is not custodian of locker facility or safe deposit articles and the Claimant (s), who may be a nominee or an individual receiving the articles, on behalf of the minor.

v) A Separate statement from nominee or the person competent to receive articles on behalf of minor as the case may be, that all the contents in the locker or in the safe custody of the bank, as the case may be, are received and the locker is empty, and they have no objection to allotment of the locker to any other customer as per norms.

vi) While giving access to the survivor(s) | nominee(s) of the deceased locker hirer /depositor of the safe custody article, Branch may avoid insisting on the production of Succession certificate. letter of administration or probate etc., or obtaining any bond of indemnity or surety from the survivor(s)/nominee(s), unless there is any discrepancy in nomination.

vii) Branches are not required to open sealed/closed packets left with them for safe custody or found in locker while releasing them to the nominee(s) and surviving locker hirers/ depositor of safe custody article.

16. Even though that being the situation, the learned Standing Counsel for the Bank placed heavy reliance on clause 10.2. Sub-clause (a) thereto specifies that in case where deceased locker hirer had not made any nomination or where the joint hirers had not given any mandate that the access may be given to one or more of the survivors by a clear survivorship clause, the procedures prescribed thereunder may be adopted. However, sub-clause (b) thereto makes it undoubted that the said situation also deals with a case where there is no nomination by the sole locker hirer; which

specifies that in case of death of a sole locker hirer (where there is no nomination) and there is a valid will, probate may be obtained, and access may be given to the executor/administrator; in other cases, access may be given to the legal representative of the deceased; and in such cases, death certificate and proof of the legal representation should be obtained and the legal representation would be in the form of probate or Letters of Administration.

17. In my considered view, none of the circumstances contained under Exhibit R2(a) circular and Exhibit R2(b) guidelines issued by the State Bank of India would come into play insofar as a joint locker hirer is concerned even after the death of one of the hirers.

18. The issue was considered by a Division Bench of the Madras High Court in **Hepzibah Annathai Rengachari v. R. Ananthalakshmi Rangachari** [MANU/TN/0233/1975 = AIR 1975 Mad 342 = (1975) ILR 1 Mad 385] and held that monies in bank either or survivor or joint accounts, letters of administration is not necessary for claiming the same, and it is held thus in paragraphs 2 and 3:

2 . Normally, when Letters of Administration are applied for, as envisaged by the provisions of Chapter II of the Indian Succession Act, the entirety of the assets of the deceased should be disclosed in the affidavit of assets which will count for valuation for purposes of court-fee. That this is so, was held in Parthasarathi Naidu In re, MANU/TN/0170/1955 : AIR1955Mad411 . As pointed out in that decision, the rule has exceptions as provided by Sections 254 to 257.

Though the appellant sought to invoke Section 254(1), in our opinion, the real exception applicable to this case is what is contained in Section 255. Where it is a case of joint account in a Bank and the amount is payable to either or survivor, the nature of the case requires that it is treated as an exception to the general rule we mentioned. This is because, though the will in this case devised the entire assets of the deceased testator in favour of the appellant, inasmuch as the account was joint and the amount standing to its credit was payable to either or survivor, the appellant, as between the Bank and herself would be entitled to draw the same in her own right. On that view, it may not even be necessary to obtain Letters of Administration, for, there is in that case little to administer, and, as we mentioned, her right to draw the amount can be independently of the will. In the case of payment of the death benefit, that again, as we take it, was payable to the wife and though it may not stand on the same footing as the joint account aforesaid, still her right to draw the money as death benefit would likewise arise even independent of the will. That being so, we are inclined to think that this is a case where Letters of Administration are totally unnecessary for the appellant so far as the above two items are concerned.

3 . It is, however, strenuously contended before us that, even on the footing of the amount payable to either or survivor, since there is no presumption in favour of the wife, all that could be said is that there would be a resulting trust in favour of the surviving wife, and that, as the respondent is the senior wife of the deceased, she would be entitled to share that amount. This argument, as we think, is mixed up with the real issue, namely, whether the appellant could invoke any of the exceptions to the general rule. That question does not involve consideration and disposal of the rights of the contesting claimants in respect of the two amounts. From the stand point of administration and the requirement of mentioning the items the deceased left in the affidavit of assets, which will eventually bear on court-fee, we are of opinion that at this stage substantive, rights of

the contending claimants do not fall to be decided. All that we are concerned is to see whether the nature of the case requires application of the exception contained in Section 255. We think that, in this case, the nature of the case being such, namely, a joint account payable to either or survivor, the surviving wife is entitled to draw the money in her own right. Apart from that, she is not obliged even to apply for Letters of Administration.”...

19. In the instant case, the petitioner is a joint hirer of the locker and was free to operate the locker during the lifetime of her husband Sasidharan Pillai and thereafter also. Anyhow, the learned counsel for the respondent Bank has invited my attention to Section 218 of the Indian Succession Act, 1925 dealing with ‘to whom administration may be granted, where the deceased is a Hindu, Muhammadan, Budhist, Sikh, Jaina or exempted person’. Sub-Section (1) thereto clearly specifies that if the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

20. In my considered opinion, Section 218 of the Indian Succession Act, 1925 stipulates the manner in which administration of estate is to be granted by a court of law, in cases where a person has died intestate. This is a case where the first petitioner, who is the joint owner of a locker hired from the Bank, was

prevented by the Bank from operating the locker. To put it otherwise, in my considered view, Section 218 of the Act, 1925 has no application, since the petitioner is the joint owner, who is entitled, as of right, to operate the same, even according to the Bank, independent of the other joint hirer of the locker. There is also no requirement to secure any letters of administration under Section 29 of the Administrators-General Act, 1963. There is also no case for the respondent Bank that there is any litigation instituted by anyone in the matter of assets left by the deceased Sasidharan Pillai.

Upshot of the above discussion is that the petitioner is entitled to succeed. The writ petition is allowed and consequently it is declared that the first petitioner is entitled, as of right, to operate the locker in question. Accordingly, there will be a direction to the respondent Nos. 2 and 3 to permit the first petitioner to operate locker No.26 held by the first petitioner with the State Bank of India, Chadayamangalam Branch, Kollam District.

sd/- **SHAJI P. CHALY, JUDGE.**

Rv

APPENDIX OF WP(C) 2665/2023

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE DEATH CERTIFICATE DATED 08.08.2022 ISSUED BY THE THIRUVANANTHAPURAM CORPORATION.
- Exhibit P2 TRUE COPY OF THE FAMILY MEMBERSHIP CERTIFICATE DATED 05.12.2022 ISSUED BY THE EDAMULAKKAL VILLAGE OFFICER.
- Exhibit P3 TRUE COPY OF THE LETTER DATED 04.01.2023 ISSUED BY THE 3RD RESPONDENT.
- Exhibit P4 TRUE COPY OF THE JUDGMENT IN WPC NO. 16277/2020 OF THIS HON'BLE COURT DATED 12.08.2020.
- Exhibit P5 TRUE COPY OF THE REQUEST DATED 13.01.2023 SUBMITTED BEFORE THE 1ST AND 2ND RESPONDENTS

RESPONDENT EXHIBITS:

- EXHIBIT-R(2)(A) TRUE COPY OF RELEVANT PAGES OF THE CIRCULAR DATED 18-8-2021 ISSUED BY RESERVE BANK OF INDIA.
- EXHIBIT-R(2)(B) TRUE COPY OF THE RELEVANT PAGES OF THE REVISED GUIDELINES DATED 20-1-2022 ISSUED BY RESERVE BANK OF INDIA.

True Copy

PS To Judge.