

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

**Civil Revision No. 1682 of 2015**

**IN THE MATTER OF:**

Md. Monjurul Hoque Chowdhury and others

.....petitioners

-Versus-

Bilkis Ara Begum and another

.....Opposite Parties

Mr. M.I. Farooqui, Senior Advocate with

Mr. Sadekur Rahman,

Mrs. Nazneen Nahar and

Mr. Mahbub-Ule-Islam, Advocates

...for the Petitioners

Mr. B.M. Elias and

Mr. Md. Maksud Alam, Advocates

.....for the Opposite Parties.

*Heard on: 14.01.2016, 04.02.2016,  
07.02.2016, 15.02.2016, 16.02.2016,  
16.03.2016 & 22.03.2016*

Judgment on: 03.04.2016

**Present:**

**Ms. Justice Naima Haider**

**And**

**Mr. Justice Khizir Ahmed Choudhury**

**Naima Haider, J:**

This rule has been issued at the instance of the petitioner against the opposite parties to show cause as to why the judgment and order dated 10.03.2015 passed by the learned Additional District Judge, 1<sup>st</sup> Court, Dhaka in Miscellaneous Appeal no.223 of 2014 dismissing the same and affirming the judgment and order dated 03.09.2014 passed by the learned Joint District Judge, (District Delegate) 3<sup>rd</sup> Court, Dhaka in Succession Case no.335 of 2014

rejecting the petition of Succession under order VII Rule 11 of the Code of Civil Procedure should not be set aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

In this Civil Revision, a question is raised whether a nominee under Sanchayapatra Rules, 1977 or any other law relating thereto has superseded the rights of the successors in favour of the nominee for the debts lying with the authority concerned.

Mr. M. I. Farooqui, learned Senior Advocate appearing on behalf of the petitioners submits that the Courts below have committed error of law in construing the relevant law occasioning failure of justice. He submits that a nominee is simply a trustee who does not alter or override the right of successors. On the death of a person succession opens and the successors inherit the title to the estate of the deceased and the right cannot be said to have been superseded by a nominee under the law applicable to Sanchayapatra. A nominee has no beneficial interest in the amount. Any amount paid to the nominee will, nevertheless, be the estate of the deceased, and would devolve upon all persons under the law of succession. He further submits that a nominee may receive the amount, if there is no objection, but not for his or her beneficial interests. He or she as nominee shall be liable to the lawful claimants for disbursement of the amounts received as a nominee.

Mr. B.M. Elias, the learned Advocate appearing on behalf of opposite party No.1, on the other hand, submits that in term of Sanchayapatra Rules, 1977 read with Pensioner Sanchayapatra Regulation, (নীতিমালা), 2004 there is no

scope to obtain a succession certificate by the successors, and the Successions Case was rightly rejected by the learned Courts below, and no illegality has been committed.

We have considered the submissions of the learned Advocates for the contending parties and perused the materials placed before us.

This is a case of the first impression in our jurisdiction. Before adverting to the legal question, it would be proper to mention the facts of the case and the nature of the orders passed by the Courts below.

One Md. Shahidul Haque Chowdhury died intestate on 23<sup>rd</sup> September 2013 leaving behind the petitioners, his son and two daughters from his deceased wife and opposite party No. 1 as his second wife as successors under the Muslim Personal Law. The petitioners filed Succession 335 of 2014 in the Court of Joint District Judge (District Delegate), Third Court, Dhaka for granting a succession certificate for a sum of Tk. 26,25,000/- out of the total sum of Tk. 30,00,000/- lying with the Bangladesh Bank in the name of their deceased father under the Sanchayapatra Scheme. They conceded that opposite party Bilkis Ara Begum (widow of the deceased) would be entitled to Tk. 3,75,000/- according as the share of  $\frac{4}{32}$ <sup>nd</sup> as Quranic heir. She appeared and filed an application under Order VII rule 11 of the Code of Civil Procedure for rejection of the succession case claiming the absolute right over the total sum of money as nominee of her deceased husband excluding the right of the successor. Her application, on contest, was allowed with the observation, *inter alia*, that the deceased had nominated his wife (opposite party No.1) as 100

percent nominee of the Sanchaypatra to withdraw the value of the Sanchaypatra, and as such the petitioners are not entitled for succession certificate, and the Court has no jurisdiction to grant a certificate under section 372(1) the Succession Act in that section 103 of the Bank Companies Act and rule 17 of Sanchaypatra Rules 1977 authorizes the nominee to withdraw the amount on the death of the depositor.

The petitioners as appellants filed Miscellaneous Appeal No. 223 of 2014 before the District Judge, Dhaka, and on transfer, the appeal was heard by the Additional District Judge, First Court, Dhaka, who disallowed the appeal on the same principles the trial Court had held.

In the instant case, the only question that needs to be addressed is, what is the status of a nominee who has been validly nominated by the purchaser of Sanchay Patra (savings certificate) under rule 14 of the Sanchay Patra Rules, 1977? Does he/she become the owner of the certificate and is entitled to receive the proceeds to the exclusion of other legal heirs of the certificate purchaser?

In order to appreciate the rival contentions, it is necessary to examine the provisions of the law applicable here.

Sanchaypatra Rules, 1977 (amended up to 30 June, 2015) came into force on 20<sup>th</sup> December, 1977 for the Government Saving Certificates. To appreciate the contentions of the parties it is necessary to examine relevant rules 14,14A, 15, 16, 17 and 37 of the Sanchaypatra Rules, 1977, which provide as under:

#### **14. Nominations:-**

(1) In the case of purchase of certificate by individual or individuals : Whether adult or minor, holding the certificate singly or jointly nomination may be made by the purchaser(s) of certificate in the application form at the time of the purchase, specifying the amount, whether whole or in part, (and) receivable by the nominee on the death of the purchaser(s).

(2) Nomination made under sub-rule (1) shall cease to have effect in case the nominee dies before the death of the holder or before he has received any sum there under.

14A. Note. “ Nominee” means and individual or group of individuals, and includes any company or association or body of individuals, whether it is incorporated or not. (This note was inserted on 20.08.2008 by notification No. অম/অসবি/সঞ্চয়/এ-৬/৯৯/১৩৭ তারিখঃ ২০.০৮.২০০৮ খ্রিঃ এর মাধ্যমে ১৪ এ Note সং-যাজন করা হ-য়-ছ।).

**15. Cancellation etc. of the nomination:-** A holder of a certificate may be noticed to the Issuing vary or cancel the nomination made under rule 14 at any time.

**16. Where no nominee exists:-** In any case where-

(a) a holder dies without making any nomination under rule 14 or after having made such nomination, it has ceased to have effect under rule 14(2) .

(b) the sum or part of the sum in respect of which no nomination has been made does not exceed Taka twenty five thousand ; and

(c) the probate of the will of the holder or the letters of administration of his estate, or a succession certificate under the succession Act, 1925 (XXXIOX of 1925), is not produced to the officer or authority authorized in this behalf within three months of the death of the holder,

Payment of the sum or part thereof, as the case may be, shall be made to the person who appears to be entitled to receive it or to ad administer the estate of the deceased holder, by the authority empowered by the Government in this respect and to the extent to which it is so empowered.

**17.Nominee to receive amount of the certificate:-** It shall open to a nominee under rule 14 to receive the amount due to him on the death of the holder either immediately or on maturity of the certificate.

“Note: Nominee or successor can withdraw Three Monthly Profit in respect of তিন মাস অন্তর মুনাফাভিত্তিক সঞ্চয়পত্র।

37. Exceptions in certain cases for encashment:- Certificates of any denomination may be enchased before the period mentioned in rule 36 under the following the conditions, namely:-

- (a) after the death of the holder or after the death of both the holders in the case of a joint holding when encashment is required by heirs.
- (b) voluntarily by the holder when the holding is in excess of the limits prescribe in rule 21 or on demand by the Issuing Authorities on discovery of such excess;
- (c) when certificates pledged under rules are being forfeited owing to any default of the pledger and the pledge claims the amount;
- (d) when ordered by a court;
- (e) under special circumstances within the first year of their issue without any interest, with the permission of the Bangladesh Bank or its branch offices, officer-in-charge, National Savings Bureau or the Postmaster General or , on his behalf , by a Superintendent of Post Offices of Gazetted Head Postmaster.

Note:- If the entire pledged amount is not being claimed fresh certificates may be issued for the unclaimed balance under rule 39.

Now, the question is what is the legal position of a nominee *vis-à-vis* a successor to the estate of the deceased? It is clear from the rules quoted above that a nominee does not inherit any title to Sanchaypatra (saving certificates). Rule 14 (2) of the Sanchaypatra Rules determines the status of the nominee made by the purchaser under rule 14(1) as nomination made under sub-rule (1) shall cease to have effect in case the nominee dies before the death of the holder or before he has received any sum there under. It is obvious that on the

death of the nominee his or her heirs do not inherit the sum. It has been reiterated in rule 16(1) as well. Rule 17 is subject to rule 14(1)(2) as pointed out. In rule 37 there are even exceptions enumerated in clauses (a)(b)(c)(d)(e) for encashment of Sanchaypatra without intervention of the nominee. It does not appear that the depositor intends to dispose of beneficial interest to the nominee. A nominee, therefore, has assumed the character of a trustee under sections 80 and 81 of the Trust Act, 1882 and is liable to those who have beneficial interest in Sanchaypatra. It will be relevant to quote the legal meaning of “nominee” from Black Law Dictionary (Ninth Edition) at P. 1149.

Nominee means:

*“A party who holds bare legal title for the benefits of others or who receives and distributes funds for the benefits of others.”*

There is another aspect of the case: The parties are governed under the Muslim Personal Law (Shariat) Application Act (XXXVI of 1937). It overrides any custom or usage to the contrary (save questions relating to agricultural land) regarding intestate succession, the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat). The succession under the Muslim Personal, however, cannot be presumed to have been altered or superseded unless there is specific law contrary to the Shariat law of succession or the law with non obstante clause. There is nothing in the statute book to presume that a nominee has superseded the Shariat Law of succession.



The learned Additional District Judge in appeal has applied Bank Company Act, 1991, and has discussed section 103 (30 of the Act. He has also considered nitimala 8(6) of 2004, and came to the finding that a nominee alone has absolute right (নিরংকুশ অধিকার) to receive the debt and the others (successors rights) have been superseded.

Bank Company Act, 1991 (Act No. XIV of 1991) is not at all applicable, as it does not deal with Sanchaypatra (saving certificates). It deals with the deposit ( আমানত) of the clients of the schedule banks. On the other hand, it is the Sanchaypatra Rules, 1977 that alone deals with the regulation of Sanchaypatra that provide under different heads the “ procedure for purchase; nomination ; payment by investors for certificate; permissible limits for holding (face value of certificates) by various classes of investors; penalty for holding certificate in excess of the maximum value prescribed under rule 21; issue of certificates, encashment, discharge and transfer of certificate; discharge and exchange of certificates; encashment of holding of a deceased persons; profit payable on certificate; transfer from one person to another; acceptance of certificate in payment of Government ; pledging of certificates as security; replacement of lost, destroyed or damaged certificate.”

Section 69(1)(2) of Sanchaypatra Rules 1977 provides that “the Sanchaypatra Rules (amendment 2002) shall be treated as General Rules for all Sanchaypatra, in case of introduction of any Sanchaypatra to be guided by its own sub-rule and any of such rule contradicts with Sanchaypatra Rules, 1977 (amendment) that rule will be treated void mutatis mutandis.”

Therefore, Sanchaypatra Rules, 1977 is a complete code that regulates the management of Sanchaypatra (saving certificate). Bank Company Act, 1991 has no manner of application. The Government has made the Sanchaypatra Rules by order of the President. He appears to have constitutional authority under Article 85 of the Constitution to make rules in respect of Public Account of the Republic. Bank Company Act is applicable to the schedule Bank in respect of deposits or আমানত deposited by the depositors. It does not regulate the sanchaypatra.

The learned Additional District Judge, while applying Bank Company Act, 1991, has drawn inspiration from a Nitimala (a sub- rule) 8(6) of Sanchaypatra Nitimala, (Regulation) 2004 but has considered in isolation of other nitimalas or sub-rules. It is a delegated legislation. The learned Additional District Judge has relied on nitimala 8(6) in isolation, ignoring the other nitimalas relating thereto. Relevant portions of Sanchaypatra Nitimala, 2004 are quoted below:

৮। নমিনি ম-নানয়ন:

- (১) বিনিয়োগকারী যে কোন এক বা একাধিক ব্যক্তিকে নমিনি মনোনয়ন প্রদান করি-ত পারি-বন।
- (২) বিনি-য়াগকৃত অ-র্থর সম্পূর্ণ অথবা অংশ বি-শ-ষর জন্য নমিনি ম-নানয়ন প্রদান করা যাই-ব।
- (৩) বিনি-য়া-গর সময় নমিনি ম-নানয়ন প্রদান না করি-ল পরবর্তী সম-য়ও বিনি-য়াগকারী ইচ্ছা করি-ল নমিনি ম-নানয়ন প্রদান করি-ত পারি-বন।

- (৪) বিনি-য়াগকারী ইচ্ছা করি-ল যে কোন সময় নমিনি পরিবর্তন বা বাতিল করি-ত পারি-বন।
- (৫) বিনিয়োগকারীর পূর্বে মনোনীত ব্যক্তি বা ব্যক্তিগণের মৃত্যু হইলে সংশ্লিষ্ট মৃত ব্যক্তির ক্ষেত্রে উক্ত মনোনয়ন বাতিল বলিয়া গণ্য হইবে।
- (৬) যথাযথ নমিনি ম-নানয়ন ব্যতি-র-ক বিনি-য়াগকারী মৃত্যুবরণ করি-ল তাহার ওয়ারিশ বা ওয়ারিশগণ তাহার প্রতি প্র-যাজ্য পা-সর্নাল ল অনুযায়ী মুনাফা সহ বিনি-য়াগকৃত অর্থ পাইবার অধিকারী হই-বন।
- (৭) বিনিয়োগকারীর মৃত্যুর পর নমিনি বা উত্তরাধিকারী ইচ্ছা করিলে বিনি-য়াগকারীর মৃত্যুর তারিখ পর্যন্ত প্রাপ্য টাকা গ্রহন করি-ত পারি-বন অথবা সঞ্চয়পত্রের মেয়াদ পর্যন্ত নির্ধারিত হারে তিন মাস অন্তর মুনাফা উত্তোলন করিতে পারিবেন।

Sanchaypatra Nitimala 8 should be read as a whole to get the correct meaning. Nitimala 8(3) (4) and (5) make it clear that no inheritable right is created in favour of the nominee. He or she has no beneficial interest in the sanchaypatra. The learned Additional District Judge failed to consider the Sanchaypatra Rules, 1977, which has treated nitimala or sub-rule, if contradicts the Sanchaypatra Rules, 1977 to be treated as void (see rule 69) . It runs as follows:

69(1) Sanchaypatra Rules, 1977 (amendment 2002) shall be treated as General Rules for all Sanchaypatra:

(2) In case introduction of any Sanchaypatra to be guided by its own sub rule and any of such rule contradicts with Sanchaypatra Rules, 1977 (amendment 2002) that rule will be treated void mutatis mutandis.

In *Vishin N. Khanchandani Vs. Vidya Lachmandani*, AIR (SC) 2747=2000(6) SCC 724, the Supreme Court of India has considered the Government Savings Certificate Act, 1959 , sections 6,7 and 8 , and has held as follows:

“The submission made on behalf of the appellants has no substance in view of sub-section (2) of section 8 and the Statement of Objects and Reasons necessitating the passing of the Act. Sub-section (1) of Section 8 provides that if any payment is made in accordance with the provisions of the Act to a nominee, the same shall be a full discharge from all further liabilities in respect of the sum so paid. Section 7 of the Act provides that after the death of the holder of the savings certificates payment of the sum shall be made to the nominee, if any, and sub-section (1) of Section 8 declares that such payment shall be a full discharge from all further liabilities in respect of the sum so paid. However, sub-section (2) of Section 8 Specifies that the payment made to the nominee under sub-section (1) shall not preclude any executor or administrator or the legal representative of the deceased holder of a savings certificate from recovering from the person receiving the same under Section 7; the amount remaining in nominee`s hand after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration. In other words though the nominee of the national savings certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to

it under the law of succession applicable in the case, however, subject to the exception of deductions mentioned in the sub- section.”

There is a similar provision of law in our Bank Company Act, 1991 meant for “deposits “ or “আমানত” in section 103(3)(4) as follows:

Section 103 (1).....

(2).....

(৩) আপাততঃ বলবৎ অন্য কোন আইনের বা কোন উইলে বা সম্পত্তি বিলি বন্ট-নর ব্যবস্থা সম্বলিত অন্য কোন প্রকার দলি-ল যাহা কিছুই থাকুক না কেন, উপ-ধারা(১) এর অধীনে কোন ব্যক্তিকে মনোনীত করা হইলে বা উপ-ধারা (২) এর অধীন কোন ব্যক্তি নির্দিষ্ট হইলে তিনি একক আমানতকারী বা ক্ষেত্রমত যৌথ আমানতকারীগণের সকলের মৃত্যুর পর, উক্ত আমানতের ব্যাপারে একক আমানতকারীর বা , ক্ষেত্রমত, সকল আমানতকারীর যাবতীয় অধিকার লাভ করিবেন, এবং অন্য যে কোন ব্যক্তি উক্ত অধিকার হইতে বঞ্চিত হইবেন।

(৪) এই ধারার বিধান অনুযায়ী কোন ব্যাংক কোম্পানী কর্তৃক টাকা পরি-শাধিত হই-ল সংশ্লিষ্ট আমানত সম্পর্কিত উহার যাবতীয় দায় পরি-শাধ হইয়া-ছ বলিয়া গণ্য হই-ব;

তবে শর্ত থাকে যে, যে ব্যক্তিকে এই ধারার অধীনে আমানতের টাকা পরিশোধ করা হইয়াছে সেই ব্যক্তির বিরুদ্ধে অন্য কোন ব্যক্তির কোন অধিকার বা দাবী থাকি-ল তাহা এই উপ-ধারার বিধান ক্ষুণ্ণ করি-ব না।

(Emphasis Supplied)

It appears that Bank Company Act 1991 also does not confer any title to the nominee over the Deposit or আমানত of the deceased. A nominee is liable for the amount to the rightful successors under the Bank Company Act as well.

From a plain reading of Rule 14 of the Sanchay Patra Rules, 1977 it is clear that the intention of the Rules is to provide for who has to deal with the bank on the death of a purchaser of certificate and not to create a new rule of succession. The purpose of nomination is to make certain the person with whom the bank has to deal, and not to create interest in the nominee to the exclusion of those who in law will be entitled to the estate. The further purpose of nomination is to avoid unnecessary hassles and confusion in case there are disputes between the heirs and legal representatives and to obviate the necessity of obtaining legal representation and to avoid uncertainties as to with whom the bank should deal to get proper discharge. Therefore, the persons entitled to the estate of the deceased do not lose their right to the same.

The idea of having this Rule is to provide for a proper discharge to the bank without involving the bank into unnecessary litigation which may take place as a result of dispute between the heirs or representatives. This being the position, the contention of Mr. Elias cannot be accepted. Even when a person is nominated or even when a person is recognized as a heir or a legal representative of the deceased certificate purchaser, the rights of the persons who are entitled to the deposit of the deceased certificate-purchaser by virtue of law governing succession are not lost and the nominee or the heir or legal representative recognized by the bank, as the case may be, holds the money and interest of the deceased for disposal of the same in accordance with law. It is only as between the bank and the nominee or heir or legal representative that the bank and its customer is created and this relationship continues and subsists

only till the estate is administered either by the person entitled to administer the same or by the Court or the rights of the heirs or persons entitled to the estate are decided in a Court of law. Thereafter, the bank will be bound to follow such decision. The nominee, therefore, cannot be said to have become the owner of the money of the other heirs merely by virtue of nomination.

It is in this Courts' view, Rules 14,15,17 and 37 do not lay down any special rule of succession of properties of a deceased account holder overriding the general rules of inheritance prescribed by the personal law in absence of a non-obstante clause in the Rules,1977. A mere nomination made under Rule 14 does not have the effect of conferring on the nominee payable under the National Savings Certificate on the death of the holder of the same. The nomination only indicates the hand which is authorized to receive the amount, on the payment of which the bank gets a valid discharge of its liability under the savings certificate. The amount, however, can be claimed by the heirs of the holder in accordance with the law of succession governing them.

Thus, the position stands concluded in favour of the present petitioners that by virtue of nomination of Bilkis Ara Begum by her deceased husband under Rule 14 of the Sanchaypatra Rules, 1977, she does not become absolute owner of the money, however, was only empowered to hold the money in trust for the true owners that too for the purpose of dealings with the bank. Bilkis Ara Begum as such, had no power and authority to claim the money as a whole to the exclusion of the other legal heirs of Md. Shahidul Hoque Chowdhury

except heirs along with other legal heirs of the said Shahidul Hoque Chowdhury.

Taking into consideration the above, this Court finds merit in the submission of the learned counsel for the petitioners as well as in the Rule issued.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and order passed by both the Courts below are hereby set aside. The application for granting succession certificate is allowed and the learned Joint District Judge (District Delegate), 3<sup>rd</sup> Court, Dhaka is directed to issue a Succession Certificate in Succession Case No.335 of 2014 in favour of the applicants as prayed for.

Since it is a contentious matter, Bangladesh Bank is directed to distribute the amount lying against the Sanchaypatra in the name of the deceased Md. Shahidul Haque Chowdhury among his heirs on the basis of the succession certificate to be issued by the Court below.

The order of status quo granted at the time of issuance of the rule stands vacated.

Communicate a copy of the judgment to the Court concerned.

**Khizir Ahmed Choudhury, J.**

***I agree.***