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Succession Law Overrides Nomination under the Companies Act – Supreme Court Clears Air

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Considering the economic value of the stakes involved, the nomination of shares and securities has been widely debated and litigated subject-matter. Nomination was introduced for 'shares' in Companies Act, 1956 by an amendment in 1999 and then nomination for 'securities' was provided under the Companies Act, 2013. Rights of the nominee become more critical when the shareholder has either executed a Will or shares and securities are held jointly with another person, and in both the cases, nominee is neither the legal heir nor the joint shareholder. Recently, the Supreme Court has cleared air over rights of legal heirs and rights of nominees. Supreme Court has interpreted the position of 'nominee' in relation to shares and securities and these observations are important from the perspective of succession planning. This article is an analysis of the judgment in Shakti Yezdani *v.* Jayanand Jayant Salgaonkar *[2024] 178 CLA 155 (SC).* ❖❖EFW❖❖

Brief facts of the Case

1. The parties to the dispute were the legal heirs and representatives of the testator, late Jayant S Salgaonkar ('JSS'). JSS had executed a Will in June 2011 making provisions for the devolution of his estates upon the successors. Apart from the properties mentioned in the Will, JSS had certain fixed deposits in respect of which respondent Nos. 2, 4 and appellant No. 2 were

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made nominees. Additionally, there were certain mutual fund investments in respect of which appellants and respondent No. 9 were made nominees. JSS passed away in August 2013. Suits were filed by the parties with a prayer that properties of the testator may be administered under the court's supervision. The parties also prayed for injunction restraining all others from disposing, transferring, alienating, assigning and/or creating any third-party interests in respect of said properties.

Observations of Single Judge of Bombay High Court

2. Based on arguments by parties, the Single Judge of Bombay High Court opined that the fundamental focus of sections 109A and 109B of the Companies Act, 1956 and bye-laws of the Depositories Act is not the law of succession nor it is intended to restrict the law of succession in any manner. The Single Judge of Bombay High Court relied on several judgments of the Supreme Court (discussed later) on the subject-matter and also observed that the decision in *Harsha Nitin Kokate* v. *Saraswat Co-operative Bank Ltd.* [2010] 99 CLA 46 (Bom.) (*'Kokate case'*) is *per incuriam* as it was rendered without considering relevant and binding precedents.

Observations of Division Bench of the Bombay High Court

3. Aggrieved by the decision, the parties challenged the order. While dealing with the appeals, the Division Bench of the Bombay High Court observed that 'vesting' under the provisions of section 109A of the Companies Act, 1956 does not create a third mode of succession and the provisions are not intended to create another mode of succession. It was also observed that the nominee of a holder of a share or securities is not entitled to the beneficial ownership of the shares or securities which are the subject-matter of nomination to the exclusion of all other persons who are entitled to inherit the estates of the holders as per the law of succession. The Division Bench of Bombay High Court held that 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 provision of the section 109A and Bye-law 9.11 of the Bye-laws framed under the Depositories Act, 1996. The observations of the Single Judge of Bombay High Court on *Kokate case* was upheld.

Issues before the Supreme Court

4. Aggrieved by the decision, the parties challenged the order. Based on the submissions of the parties, the Supreme Court noted the following issues:

- Scheme, intent and object behind the Companies (Amendment) Act, 1999 ('CAA, 1999')
- Implication of scheme of 'nomination' under the Companies Act, 1956 as well as other comparable legislations
- Use of the term 'vest' and presence of non-obstante clause within the provisions of the Companies Act, 1956

- Nomination under the Companies Act, 1956 *vis-à-vis* law of succession.

Scheme and Intent of Amendment Act, 1999

5. Supreme Court referred to the Statement of Objects & Reasons of the Amendment Act, 1999 and observed :

> "The object behind the introduction of a nomination facility as can be appreciated was to provide an impetus to the corporate sector in light of the slow investment during those times. In order to overcome such conditions, boosting investors' confidence was deemed necessary along with ensuring that company law remained in consonance with contemporary economic policies of liberalisation. In fact, the provision of nomination facility was made in order to ease the erstwhile cumbersome process of obtaining multiple letters of succession from various authorities and also to promote a better climate for corporate investments within the country. In contrast, one must note that ownership of the securities is not granted to the nominee nor there is any distinct legislative move to revamp the extant position of law, with respect to the same."

The Supreme Court considered this object of the amendment as the basis for its conclusion in this case.

Implication of Scheme of 'Nomination' under Companies Act and Other Comparable Legislations

6. The Supreme Court referred to several precedents on 'nomination' under several legislations like Government Savings Certificate Act, 1959, Banking Regulation Act, 1949, Life Insurance Act, 1938 and Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Same are summarised as follows:

- *Sarbati Devi* v. *Usha Devi* (1984) 1 SCC 424 – Nomination under section 39 of the Insurance Act, 1938 is subject to the claim of heirs of the assured under the law of succession.
- *Nozer Gustad Commissariat* v. *Central Bank of India* [1993] 12 CLA 197 (Bom.) – Nomination under sub-section (2) of section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 cannot be made in favour of a non-family person. The court relied upon the case of *Sarbati Devi (supra)* to state that the principles therein were applicable to the Employees' Provident Funds Act as well and not merely restricted to the Insurance Act.
- *Vishin N Khanchandani* v. *Vidya L Khanchandani* [2001] CLA-BL Supp. (Snr.) 36 (SC) – Nominee entitled to receive the sum due on the savings certificate under sub-section (1) of section 6 of the Government Savings Certificate Act, 1959, but cannot utilise it. In fact, the nominee may retain the same for those entitled to it under the relevant law of succession.
- *Ram Chander Talwar* v. *Devender Kumar Talwar* [2011] 100 CLA (Snr.) 2 (SC) – Nomination made under section 45ZA of the Banking Regulation Act, 1949 entitled the nominee to receive the deposit amount on the death of the depositor.

The Supreme Court observed that a consistent view is taken by the Courts while interpreting the related provisions of nomination under different statutes and that it is clear from the referred judgments that the nomination so made

would not lead to the nominee attaining absolute title over the subject-property for which such nomination was made.

Use of Term 'Vest' and Presence of Non-obstante Clause within the Provisions of Companies Act

7. On this issue, the Supreme Court referred to several judgments and observed :

> 'The legislative intent of creating a scheme of nomination under the Companies Act, 1956 in our opinion is not intended to grant absolute rights of ownership in favour of the nominee merely because the provision contains three elements, *i.e.*, the term "vest", a non-obstante clause and the phrase 'to the exclusion of others', which are absent in other legislations, that also provide for nomination.'

Applying the rules of interpretation of statutes, the Supreme Court observed that the non-obstante clause in section 109A of Companies Act, 1956 should also be interpreted keeping in mind the scheme of the Act and the intent of introduction of nomination facility under section 109A and section 109B of the Companies Act, 1956 *vide* Amendment Act, 1999 wherein emphasis was laid on building investor confidence and bringing the company law in tune with policies of liberalisation and deregulation. Based on this background, the Supreme Court concluded that the use of the non-obstante clause, serves a singular purpose of allowing the company to vest the shares upon the nominee to the exclusion of any other person, for the purpose of discharge of its liability against diverse claims by the legal heirs of the deceased shareholder. This arrangement is until the legal heirs have settled the affairs of the testator and are ready to register the transmission of shares, by due process of succession law.

Nomination under Companies Act *vis-à-vis* Succession Act

8. The Supreme Court noted that the Government Savings Certificates Act, 1959, Banking Regulation Act, 1949 and Public Debts Act, 1944 contain a non-obstante clause, and that Insurance Act, 1938 and Co-operative Societies Act, 1912 do not have such non-obstante clause. It was also noted that there are variations with respect to the word 'vest' being present in some legislations (Employees Provident Fund Act, 1952) and absent in others (Insurance Act, 1939, Cooperative Societies Act, 1912). Taking this into consideration, the Supreme Court observed :

> "A reasonable individual arranging for the disposition of his property is expected to undertake any such nomination, bearing in mind the interpretation on the effect of nomination, as given by courts consistently, for a number of years. The concept of nomination if interpreted by departing from the well-established manner would, in our view, cause major ramifications and create significant impact on disposition of properties left behind by deceased nominators."

It was contended by the appellants that nominations under section 109A of Companies Act, 1956 and bye-law 9.11 of Depositories Act, 1996 suggest

the intention of the shareholder, to bequeath the shares/securities absolutely to the nominee, to the exclusion of any other persons (including legal representatives) and constitutes a "statutory testament". The Supreme Court rejected this observation with following reasons: (*i*) Companies Act, 1956 does not contemplate a "statutory testament" that stands over and above the laws of succession, (*ii*) Companies Act, 1956 is concerned with regulating the affairs of corporates and is not concerned with laws of succession, (*iii*) "Statutory testament" by way of nomination is not subject to the same rigours as is applicable to the formation and validity of a will under the succession laws, for instance, section 63 of the Indian Succession Act, wherein the rules for execution of a Will are laid out.

Conclusion by Supreme Court

9. Finally, the Supreme Court dismissed the appeal by stating that the provisions of the Companies Act do not deal with the law of succession and a departure from this settled position of law is not warranted. It was observed that the vesting of securities in favour of the nominee as contemplated under the Companies Act (1956 and 2013) and bye-laws of Depositories Act, 1996 is for a limited purpose, *i.e.,* to ensure that there exists no confusion pertaining to legal formalities that are to be undertaken upon the death of the holder and by extension, to protect the subject-matter of nomination from any protracted litigation until the legal representatives of the deceased holder are able to take appropriate steps.

Observations and Comment

10. This Supreme Court judgment clears air over nomination and role of nominee where the shares or securities are held in single name and the person mentioned in executed Will and nominee are different. This judgment is important from the perspective of company and succession planning, as well. However, it will be interesting to have clarity on the issue where shares or securities are held jointly (by two or more persons), one of the joint holders dies and the said deceased joint holder has executed a will with a different beneficiary. At the same time, both joint holders have appointed a nominee. Here, the question would be who will have rights over shares or securities – surviving joint holder of securities or person whose name is mentioned in Will or nominee as jointly appointed by the shareholders? Such shareholding is generally the case in family-owned companies, where the family members hold shares or securities in joint name and may mention a different person's name in the executed Will. Based on the observations of Supreme Court in the given case, in my view, the nominee may not have any rights. But in such case, the question would be whose rights will prevail – surviving joint holder (as per articles of association of the company) or person whose name is mentioned in the Will.