M/S. SARDAR ASSOCIATES & ORS. A

v.

PUNJAB & SINDH BANK & ORS.

(Civil Appeal Nos. 4970-4971 of 2009)

JULY 31, 2009 B

[S.B. SINHA AND DEEPAK VERMA, JJ.]

Banking Regulation Act, 1949 – ss. 21 and 36 – Power of Reserve bank to control advances by banking companies – Default in discharge of liabilities by borrowers and assets C *declared as Non-performing assets – Bank-creditor seeking recovery of amount from borrower-debtor – Tribunal issuing recovery certificate – Borrower seeking one time settlement of disputes as per RBI guidelines, however not accepted by bank – Allowed by appellate tribunal but set aside by High* D *Court – Sustainability of – Held: Not sustainable – RBI is entitled to formulate policies which the banking companies are bound to follow –It issued circular whereof, one time settlement scheme formulated for recovery of NPA below 10 crores – Bank is a public sector bank and bound by said guidelines –* E *Board of directors of bank had accepted the guidelines – Thus, bank is guilty of violation of equality clause – Order of High Court set aside.*

In these appeals, the order passed by Division Bench of High Court, setting aside the order of Debt Recovery Appellate Tribunal directing the respondent-bank to settle the case of the appellants in terms of the guidelines issued by RBI as applicable at the time of declaring the account as Non Performing Assets and not to recover the said amount in terms of the recovery G **certificate issued by the Debts Recovery Tribunal, is under challenge.**

Allowing the appeals, the Court

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A HELD: 1. A bare perusal of s. 21 of the Banking Regulation Act, 1949 would clearly show that the Reserve Bank of India is entitled to formulate the policies which the banking companies are bound to follow. As regards Reserve Bank of India guidelines, it was the direction of
B the appellate tribunal that the respondent-bank should settle the case of the appellants under the RBI guidelines through a One Time Settlement and should invite a proposal for settlement and recovery of the agreed amount. Thus, the impugned judgment cannot be
C sustained and is set aside. [Paras 16, 46 and 48] [814-G; 830-C, E, F]

2.1. The guidelines were issued by the Reserve Bank of India. It clearly refers to a circular dated 19.08.2005 issued by the Reserve Bank of India in terms whereof it
D was directed that one time settlement scheme for recovery of NPA below Rs. 10 crore was laid down. The said letter was issued pursuant to the aforementioned circular in terms whereof one time settlement scheme was formulated for recovery of NPA below Rs. 10 crores.
E It was categorically stated therein that the same was required to be implemented by all public sector banks. The guidelines issued were to provide a simplified, non-discretionary and non-discriminatory mechanism therefor in SME sector. It was categorically stated that all public
F sector banks shall uniformly implement these guidelines. Respondent-Bank concededly is a public sector bank. It was, therefore, bound by the said guidelines. [Paras 18 and 19] [816-E-H; 817-A]

G 2.2. The correspondences between the appellants and the respondent clearly show that the respondent-Bank had resorted to the guidelines issued by the Reserve Bank of India alone and pursuant to or in furtherance of the offer made by the bank, a proposal came to be made by the appellants in terms of its letter.
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Such a proposal was made bona fide. It was within the framework of the guidelines issued by the RBI. [Paras 23 and 24] [820-G-H; 821-A; 822-D-E]

2.3. Appellants filed a writ petition which was dismissed on the ground of suppression. The said order of High Court has been affirmed by this Court. But the same by itself did not preclude the appellants to approach the appellate tribunal. The jurisdiction of the appellate tribunal is co-extensive with the powers of the Tribunal. The memo of appeal filed by the appellants before the tribunal clearly shows that the contentions with regard to the enforcement of the said provisions had been made. It is, therefore, not correct to contend that no pleadings were made for the purpose of enforcing the RBI guidelines in respect of one time settlement. [Paras 26, 27 and 28] [822-G; 824-C-E]

2.4. It may be that no specific prayer was made but the same keeping in view the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, did not preclude the appellate tribunal to consider the offer of the appellants. The appellate tribunal in terms of the provisions of the Act like the original tribunal is interested only in recovery of the amount. While doing so, it, has the requisite jurisdiction to consider the prayer made by a debtor for one time settlement particularly in view of the fact that the same is within the purview of One Time Settlement Scheme of the Reserve Bank of India. If a public sector bank is otherwise bound by any guidelines issued by the Reserve Bank of India, there is no reason as to why the same cannot be enforced in terms of the provisions of the Act by the tribunal and consequently by the appellate tribunal. It is not a case where the appellants had prayed for quashing of a policy decision taken by the respondent-Bank. The question which arose

A for consideration before the appellate tribunal as also before the High Court was as to whether offer having been made by the bank to appellants, it could have turned around and contend that only because the appellants had furnished security to the extent of Rs.11
B crores, the same by itself would entitle it to take recourse to a discriminatory treatment. The answer must be rendered in the negative. [Para 29] [824-F-H; 825-A-B]

2.5. The offer made by the appellants in terms of the
C RBI guidelines for one time settlement was Rs. 3,45,31,000/-, however, keeping in view the fact that the respondent-Bank had a better security available to it demanded a sum of Rs. 4.92 crores. The Board of Directors of the Bank itself had accepted the guidelines. While making a deviation, the Board of Directors of a
D public sector bank could not have taken recourse to a policy decision which is per se discriminatory. Respondent-Bank is a 'State' within the meaning of Article 12 of the Constitution of India apart from the fact that it is bound to follow the guidelines issued by the
E Reserve Bank of India. If, therefore, the broad policy decisions contained in the guidelines were required to be followed, the power of the Board of Directors to make deviation in terms of Clause 4 thereof would only be in relation to some minor matters which does not touch the
F broad aspects of the policy decision and in particular the one governing the non-discriminatory treatment. In a case of this nature, it is satisfied that the respondent-Bank is guilty of violation of the equality clause contained in the RBI guidelines as also Article 14 of the
G Constitution. [Paras 30 to 33] [825-C-H; 826-A]

2.6. It is not in dispute that appellants were defaulters as also that it comes within the purview of the Small and Medium Enterprises sector. Respondent-Bank itself had

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made an offer to accept the proposal of the appellants in regard to enforcement of one time settlement pursuant to the RBI guidelines. It was all along aware that the amount of securities was lying with it. It is only pursuant thereto the directions had been issued by the tribunal. [Paras 34 and 35] [826-C-D]

2.7. If in terms of the guidelines issued by the Reserve Bank of India a right is created in a borrower, there is no reason as to why a writ of mandamus could not be issued. It is assumed that while exercising its power under Article 226 of the Constitution of India, the High Courts may or may not issue such a direction but the same, by itself, would not mean that the High Court would be correct in interfering with an order passed by the appellate tribunal which was entitled to consider the effect of such one time settlement. [Para 40] [828-E-F]

2.8. A distinction must be made between statutory and non-statutory guidelines and as also between the circular which are relevant but not binding on the third parties and which are imperative in character. [Para 45] [830-B]

Central Bank of India v. Ravindra and Ors. **(2002) 1 SCC 367, relied on.**

Arunima Baruah v. Union of India and Ors. **(2007) 6 SCC 120;** *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors.* **(2004) 7 SCC 166;** *Corporation Bank v. D.S. Gowda and Anr.* **(1994) 5 SCC 213;** *Oriental Bank of Commerce v. Sunder Lal Jain and Anr.* **(2008) 2 SCC 280;** *Union of India and Anr. v. Azadi Bachao Andolan and Anr* **(2004) 10 SCC 1;** *Commissioner of Income Tax v. Anjum M.H. Ghaswala and Ors.* **(2002) 1 SCC 633;** *UCO Bank v. CIT* **(1999) 4 SCC 599 and** *BSNL & Anr. v. BPL Mobile Cellur Ltd. and Ors.* **2008 (8) SCALE 106, referred to.**

A **Case Law Reference:**

(2007) 6 SCC 120	**Referred to.**	**Para 26**
(2004) 7 SCC 166	**Referred to.**	**Para 26**
B **(2002) 1 SCC 367**	**Relied on.**	**Para 36**
(1994) 5 SCC 213	**Referred to.**	**Para 37**
(2008) 2 SCC 280	**Referred to.**	**Para 38**
(2004) 10 SCC 1	**Referred to.**	**Para 42**
C **(2002) 1 SCC 633**	**Referred to.**	**Para 43**
(1999) 4 SCC 599	**Referred to.**	**Para 44**
2008 (8) SCALE 106	**Referred to.**	**Para 45**

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4970-4971 of 2009.

From the Judgment & Order dated 01.02.2008 in Review Petition No. 7 of 2008 in CWP No. 8267 of 2007 and Order E dated 21.11.2007 in CWP No. 8267 of 2007 of the High Court of Punjab & Haryana at Chandigarh.

Dr. Abhishek Manu Singhvi, P.S. Patwalia, Alok Kumar Agrawal Sanjay Chabra, Shipra Singh, Garima Prashad for the F Appellants.

I.P. Singh, Dipinder Singh, Gagandeep Sharma, Ajay Pal, Dharmendra Kumar Sinha, for the Respondents.

The Judgment of the Court was delivered by

G **S.B. SINHA, J.** 1. Leave granted.

2. Source of power on the part of the Reserve Bank of India to issue circulars and guidelines as regards one time settlement is the question involved herein. It arises out of a judgment and

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order dated 1.02.2008 passed in Review Petition No. 7 of 2008 and order dated 21.11.2007 passed by a Division Bench of the Punjab and Haryana High Court in C.W.P. No. 8267 of 2007 whereby and whereunder an order dated 13.04.2007 passed by the Debt Recovery Appellate Tribunal, Delhi (for short "the Appellate Tribunal") directing the respondent – bank to settle the case of the appellants herein in terms of the said guidelines as applicable at the time of declaring the account as Non Performing Assets (NPA) and not to recover the said amount in terms of the judgment and recovery certificate dated 23.11.2006 issued by the Debts Recovery Tribunal – II, Chandigarh (for short "the Tribunal") in Appeal No. 26 of 2007, was set aside.

3. Bereft of all unnecessary details, the fact of the matter reads as under:

Appellants herein as also the Performa respondent Nos. 2 to 11 along with one Smt. Darshan Kaur (since deceased) obtained the facilities for grant of loan for a sum of Rs. 3, 54,50,000/- for business purposes which was being carried out by them under the name and style of M/s. Sardar Associates Limited, appellant No. 1 herein. The said amount was sanctioned and disbursed from time to time. Indisputably, the appellant No. 2 and the Proforma respondent Nos. 2 to 11 as also the said Smt. Darshan Kaur stood as guarantors. Appellant Nos. 1 and 2 as also Proforma respondent Nos. 5 and 7 also mortgaged their properties in favour of the respondent – Bank by way of security to the said amount. Defaults having been made in discharging their liabilities, their assets were declared as NPA as per the guidelines issued by the Reserve Bank of India.

4. A proceeding was initiated by the respondent – Bank purporting to be under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the 2002 Act") for recovery of the said amount together with interest upon due service of a notice

A in terms of Sub-section (4) of Section 13 thereof. The total amount of claim laid before the Tribunal by the bank as against the debtors was Rs. 4,16,85,443.62 inclusive of interest upto 31.07.2003. The said application was allowed by the Tribunal whereagainst an appeal was preferred before the Appellate
B Tribunal.

5. Indisputably, pursuant to the judgment and order of the Tribunal, a recovery certificate was issued for recovery of a sum of Rs. 4,16,58,581.62 along with pendent lite and future interest at the rate of 12% p.a. with quarterly rests from the date of filing
C of the application till realization.

It is at that stage, the appellant No. 1 approached the respondent – bank for settlement of their disputes purported to be in terms of the guidelines issued by the Reserve Bank of
D India. They made an offer for a one time settlement for a sum of Rs. 345.31 lakhs. The said proposal, however, was not accepted by the respondent – Bank.

6. Respondent – Bank issued a circular bearing No. 176 dated 18.10.2005. Questioning the validity of the said circular,
E the appellant No. 1 filed a writ petition before the High Court contending that the same was contrary to the guidelines issued by the Reserve Bank of India insofar as the same relates to the scheme for one time settlement for the Small and Medium Enterprises. A prayer was also made therein that the
F respondent – Bank be directed to settle the matter as per the RBI guidelines. The said writ petition was dismissed only on the premise that the appellant No. 1 had not disclosed therein that it had already approached the Tribunal for recovery of the amount in question.

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7. A special leave petition filed thereagainst which was marked as SLP (C) No. 21134 of 2006 was, however, dismissed by this Court on 31.01.2007.

H 8. Appellants approached the Appellate Tribunal in terms

of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the 1993 Act"). The appeal was entertained. Respondent – Bank also preferred an appeal before the Appellate Tribunal claiming pendent lite and future interest at the rate of 16.50% with quarterly rests instead of 12% p.a. as had been granted by the Tribunal in its order dated 23.11.2006. The Appellate Tribunal by a judgment and order dated 13.04.2007, dismissed the appeal preferred by the respondent – Bank and allowed that of the appellants and the Performa Respondent Nos. 2 to 11 directing the respondent – Bank to make one time settlement in terms of the guidelines issued by the Reserve Bank of India as was prevailing at the relevant time.

9. We must, however, place on record that the Appellate Tribunal affirmed the judgment as also the validity of the recovery certificate dated 23.11.2006.

10. It furthermore permitted the appellants and the Proforma Respondent Nos. 2 to 11 to sell the secured properties for clearing the dues in terms of one time settlement scheme and ordered that such an exercise must be completed within a period of four months during which period the bank was restrained from taking any coercive steps against them.

11. Respondent – Bank filed writ application thereagainst which by reason of the impugned judgment has been allowed. Appellants filed a review application before the High Court which has been dismissed.

12. Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of the appellants would contend that the scheme in relation to one time settlement having been issued by the Reserve Bank of India in exercise of its statutory power conferred upon it under Section 21 of the Banking Regulation Act, 1949 (for short "the 1949 Act"), the impugned judgment cannot be sustained.

A The learned counsel in this behalf has furthermore drawn our attention to various correspondences exchanged by and between the parties to urge that the respondent – Bank entertained the said application asking for proposal from the appellants and, thus, they are estopped and precluded from B contending that the Board of Directors of the respondent – Bank themselves had made a scheme which was required to be followed.

13. Mr. I.P. Singh, learned counsel appearing on behalf of the respondent - Bank, on the other hand, urged:

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(i) The Appellate Tribunal committed a serious illegality in issuing the directions upon the bank to undertake implementation of scheme of one time settlement in terms of the guidelines issued by the D Reserve Bank of India as no such prayer was made in the memo of appeal.

(ii) The respondent – Bank in law was entitled to make a deviation from the guidelines issued by the Reserve Bank of India. E

(iii) Only in terms of the guidelines issued by the Board of Directors of the respondent – Bank the relaxation was to be granted to the extent of 30% wherefor the extent of the value of NPA was F required to be considered and keeping in view of the fact that the amount available with the Bank was more than sufficient to wipe off the debts, the bank was not bound to accept the one time settlement.

G (iv) The Appellate Tribunal had no jurisdiction to declare the guidelines issued by the bank to be a nullity particularly when no such case was made out in the memo of appeal nor the appellants had pleaded the same. The purpose and object for which the RBI guidelines were issued was for realization of the H

loan amount from chronic defaulters.

(v) The guidelines issued by the Reserve Bank of India were not in terms of Section 21 of the 1949 Act but were in terms of Section 35A thereof and, thus, the same was not binding on the banks.

14. The Reserve Bank of India is a statutory authority. It exercises supervisory power in the matter of functionings of the Scheduled Banks. The matter relating to supervision of Scheduled Banks is also governed by the Reserve Bank of India Act. For the aforementioned purpose, the Reserve Bank is entitled to issue guidelines from time to time.

15. The Parliament also enacted the 1949 Act to consolidate and amend the law relating to banking.

Section 5(l) of the 1949 Act defines "Reserve Bank" to mean the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934.

By reason of various provisions of the 1949 Act, the Reserve Bank is empowered to control and supervise the functioning of the Scheduled Banks. The 1949 Act also provides for power of the Reserve Bank to control advances by banking companies in terms of Section 21 of the 1949 Act which reads as under:

"21 - Power of Reserve Bank to control advances by banking companies

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as

A so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to-

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(a) the purposes for which advances may or may not be made,

C (b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,

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(d) the maximum amount up to which, having regard to the considerations referred to in clause (c),guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

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(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

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(3) Every banking company shall be bound to comply with any directions given to it under this section."

G 16. A bare perusal of the aforementioned provision would clearly show that the Reserve Bank of India is entitled to formulate the policies which the banking companies are bound to follow. Sub-section (3) of Section 21 of the 1949 Act clearly mandates that every banking company shall be bound to comply with the directions given to it in terms thereof. Section 35A of

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the 1949 Act, which was inserted by the Banking Companies (Amendment) Act, 1956, empowers the Reserve Bank to issue directions inter alia in the interest of banking policy. Section 36 of the 1949 Act also provides for further powers and functions of the Reserve Bank of India; clause (d) of Sub-section (1) whereof reads as under:

"36. Further powers and functions of Reserve Bank – (1) The Reserve Bank may-

(a) *** *** ***

(b) *** *** ***

(c) *** *** ***

(d) at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors it is necessary so to do, by order in writing and on such terms and conditions as may be specified therein-

(i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company; or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;

(ii) depute one or more of its officers to which the proceedings at any meeting of the Board of directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;

(iii) require the Board of directors of the banking company or any committee or any other body constituted by it to give

A in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

B (iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its offices or branches are being conducted and make a report thereon;

C (v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary."

17. We may, however, place on record that the Parliament, D in its wisdom, inserted Section 36A of the Act by the Banking Companies (Amendment) Act, 1959 in terms whereof some of the provisions of the 1949 Act were not to be applied to certain banking companies.

18. Indisputably, the guidelines were issued by the E Reserve Bank of India by reason of a letter dated 3.09.2005 addressed to the Chairman/ Managing Director of all public sector banks. It clearly refers to a circular dated 19.08.2005 issued by the Reserve Bank of India in terms whereof it was directed that one time settlement scheme for recovery of NPA F below Rs. 10 crore was laid down. The said letter was issued pursuant to the aforementioned circular in terms whereof one time settlement scheme was formulated for recovery of NPA below Rs. 10 crores. It was categorically stated therein that the same was required to be implemented by all public sector G banks. The guidelines issued were to provide a simplified, non-discretionary and non-discriminatory mechanism therefor in SME sector. It was categorically stated that all public sector banks shall uniformly implement these guidelines.

19. Respondent – Bank concededly is a public sector H

bank. It was, therefore, bound by the said guidelines.

Salient features of the guidelines are as under:

"(c) The guidelines will cover cases on which the banks have initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before Courts/DRTs/BIFR subject to consent decree being obtained from the Courts/ DRTs/BIFR"

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(ii) Settlement Formula amount

(a) NPAs classified at Doubtful or Loss as on March 31, 2004.

The minimum amount that should be recovered in respect of compromise settlement of NPAs classified as doubtful or loss as on 31st March 2004 would be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPA.

(b) NPAs classified as sub-standard as on 31st March, 2004 which became doubtful or loss subsequently:

The minimum amount that should be recovered in respect of NPAs classified as sub-standard as on 31st March, 2004 which became doubtful or loss subsequently would be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPAs plus interest at existing Basic Prime Lending Rate from 1st April, 2004 till the date of final payment."

A *(iii) Payment*

The amount of settlement arrived at in both the above cases, should preferably be paid in one lump sum. In cases where the borrowers are unable to pay the entire amount in one lump sum, at least 25% of the amount of settlement should be paid upfront and the balance amount of 75% should be recovered in installments within a period of one year together with interest at the existing Prime Lending Rate from the date of settlement up to the date of final payment.

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(V) Non-discretionary treatment:

Banks shall follow the above guidelines for one time settlement of all NPAs covered under the scheme, without discrimination and a monthly report on the progress and details of settlement should be submitted by the concerned authority to the next high authority and their Central Office. Banks may go for wide publicity and also give notice January 31, 2006 to the eligible defaulting borrowers to avail of the opportunity for one time settlement of their outstanding dues in terms of these guidelines. Adequate publicity to these guidelines through various means must be ensured.

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4. Any deviation from the above settlement guidelines for any borrower shall be made only by the Board of Directors."

The said circular letter was issued by the Chief General Manager of the Reserve Bank of India. The High Court in its H impugned judgment inter alia was of the opinion that he had

no authority therefor. A

20. Before, however, adverting to the question as to whether the Board of Directors of the respondent –Bank could deviate from the aforementioned guidelines and, if so, to what extent, we may notice the following correspondences, which B was exchanged by the parties hereto, so as to enable us to consider as to whether the respondent – Bank had itself applied the said guidelines in case of the appellants or not.

21. We may notice that the respondent – Bank appears to have accepted the said guidelines as is evident from the C letter dated 24.11.2005 by the respondent Bank to the appellants in the following terms:

> "As per head office guidelines, one time settlement scheme for recovery of NPA accounts upto 10 crores has D been formulated. Your account also falls within this scheme. As the said scheme is Non-discretionary, you are advised to come forward for settlement of your account as per terms & conditions of the scheme"

Clauses 4.1 and 4.2 read as under: E

> "4.1. *NPAs classified as Doubtful or Loss as on 31st March 2004:*
>
> The minimum amount that should be recovered in F respect of compromise settlement of NPAs classified as doubtful or loss as on 31st March, 2004 would be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPA.
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> 4.2. NPAs classified as sub-standard as on 31st March, G 2004 which became doubtful or loss subsequently:
>
> The minimum amount that should be recovered in respect of NPAs classified as sub-standard as on 31st March, 2004 which became doubtful or loss subsequently would H

A be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPAs plus interest at existing Basic Prime Lending Rate from 1st April, 2004 till the date of final payment."

B Under the heading "Non-Discretionary Treatment", the bank stated:

"7.1. RBI has advised that the guidelines for compromise settlement of NPAs in SME sector are non-discretionary and non-discriminatory. Therefore, if the borrower fulfills the C eligibility criteria for consideration of OTS under these guidelines then amount of OTS will be determined strictly in terms of Clause No.4.1 and 4.2 above irrespective of any other factor."

D 22. Furthermore, the respondent – Bank in its letter dated 1.12.2005, stated:

"Please refer our letter regarding the above mentioned policy of R.B.I. We are again enclosing herewith the photocopy of the policy. You are requested to come E forward as per policy for settlement of the account at your earliest."

The respondent – Bank yet again in its letter dated 01.03.2006, stated:

F "This is in continuation of our letter dated 17.02.2006 on the above subject. Please note the OTS scheme of RBI is valid upto 31.03.2006 as such please send your request well within the last date so that the proposal may be put up to the competent authority."

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23. It is on the aforementioned premise, the merit and purport of the correspondences exchanged between the parties must be considered. The said correspondences clearly show that the respondent – Bank had resorted to the guidelines H issued by the Reserve Bank of India alone and pursuant to or

in furtherance of the offer made by the bank, a proposal came to be made by the appellants in terms of its letter dated 2.03.2006; the relevant portion whereof reads as under:

> "2. As per RBI guidelines, the minimum amount that shall be recovered in respect of one time settlement of NPAs classified as doubtful of loss as on march 31, 2004 will be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPA. As the outstanding balance in our account as on March 31, 2004 was Rs.285.38 lacs, the settlement amount in respect on one time settlement of our account works out to be Rs.283.38 lacs as per RBI guidelines, out of which we have already deposited a sum of Rs.26.76 lacs (including Rs.25.00 lacs in Third Party No lien account subject to the condition that the said amount shall be appropriated by the bank only after approval of compromise proposal submitted by us plus Rs.1.76 lacs in instalments). Hence we are unable to understand how you have worked out the minimum recoverable amount to be Rs.370.49 lacs.
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> 3. RBI guidelines on OTS for SME account nowhere links the amount that shall be recovered with the fair market value of the security charged to the bank. The fair market value of security is just an assessment of the market value of the security and not the actual value of the security.
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> 4. RBI guidelines are very clear for one time settlement of dues for SME accounts with outstanding of Rs.10.00 crore or less before March 31, 2004, that those account should be settled at principal amount.
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> 5. NPAs classified as doubtful as on March 2004 are settling their accounts as per these guidelines. We also seek justice and deserve the right to settle our account strictly as per RBI guidelines, which are non-discretionary and non-discriminatory in nature. Its worth while to mention

A here that other nationalized bank in country are settling NPAs as per guidelines of RBI.

However, to avoid any further litigations and to show our sincere intentions to settle the account, we are even ready to pay the interest for 2 years, as per your instructions and categorization, upto the time when the account was first categorized as "doubtful" by bank.

Therefore, we request you to consider our proposal for one time settlement at Rs.345.31. The proposed amount of Rs.345.31 lacs has been arrived at as the amount which would have been outstanding in our account on the date when our account was categorized "doubtful" for the first time, i.e., by adding interest for 2 years at PLR Rs.59.93 lacs on the amount of Rs.285.38 lacs which was outstanding in our account as on the date when our account was categorized as non performing asset."

24. Such a proposal was made bona fide. It was within the framework of the guidelines issued by the Reserve Bank of India.

25. It is not necessary to place on record the further correspondences exchanged between the parties although our attention has been drawn thereto in terms whereof the appellants had all along been making sincere efforts to one time settlement within the parameters of the guidelines issued by the Reserve Bank of India.

26. It may be true that the appellants filed a writ petition before the Punjab and Haryana High Court which was dismissed on the ground of suppression.

In *Arunima Baruah v. Union of India and Ors.* [(2007) 6 SCC 120] the question involved was how far and to what extent suppression of fact by way of non- disclosure would affect a person's right of access to justice which is a human right.

It was held: A

"21. Ubi jus ibi remedium is a well-known concept. The court while refusing to grant a relief to a person who comes with a genuine grievance in an arguable case should be given a hearing. (See Bhagubhai Dhanabhai Khalasi.) In this case, however, the appellant had B suppressed a material fact. It is evident that the writ petition was filed only when no order of interim injunction was passed. It was obligatory on the part of the appellant to disclose the said fact. C

22. In this case, however, suppression of filing of the suit is no longer a material fact. The learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the Court's jurisdiction may not be invoked but that would not mean that another writ D petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be approaching the writ court with a pair of clean hands, and the Court at that point of time will be entitled to determine the case on merits having regard to the human right of the appellant to E access to justice, and keeping in view the fact that judicial review is a basic feature of the Constitution of India."

It was opined:

"12. It is trite law that so as to enable the court to F refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean G material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise H

A its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the
B question."

[See also *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Others* (2004) 7 SCC 166]

27. The said order of the Punjab and Haryana High Court
C dated 21.11.2006 again indisputably has been affirmed by this Court. But, in our opinion, the same by itself did not preclude the appellants to approach the Appellate Tribunal. The jurisdiction of the appellate tribunal is co-extensive with the powers of the Tribunal. The memo of appeal filed by the
D appellants before the Tribunal clearly shows that the contentions with regard to the enforcement of the aforementioned provisions had been made therein.

28. It is, therefore, not correct to contend that no pleadings
E were made for the purpose of enforcing the RBI guidelines in respect of one time settlement.

29. It may be that no specific prayer was made but the same, in our opinion, keeping in view the provisions of the 2002 Act, did not preclude the Appellate Tribunal to consider
F the offer of the appellants. The Appellate Tribunal in terms of the provisions of the Act like the original Tribunal is interested only in recovery of the amount. While doing so, it, in our considered opinion, has the requisite jurisdiction to consider the prayer made by a debtor for one time settlement particularly
G in view of the fact that the same is within the purview of One Time Settlement Scheme of the Reserve Bank of India. If a public sector bank is otherwise bound by any guidelines issued by the Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act
H by the Tribunal and consequently by the Appellate Tribunal. It

is not a case where the appellants had prayed for quashing of a policy decision taken by the respondent – Bank. The question which arose for consideration before the Appellate Tribunal as also before the High Court was as to whether offer having been made by the bank to the appellants herein, it could have turned around and contend that only because the appellants had furnished security to the extent of Rs. 11 crores, the same by itself would entitle it to take recourse to a discriminatory treatment. The answer to the said question must be rendered in the negative.

30. We may notice that the offer made by the appellants in terms of the RBI guidelines for one time settlement was Rs. 3,45,31,000/-, however, keeping in view the fact that the respondent – Bank had a better security available to it demanded a sum of Rs. 4.92 crores.

31. The Board of Directors of the Bank itself had accepted the guidelines. It, however, in its own guidelines, stated:

> "II.3 After calculation of the MRA as per point II.1 and II.2 above, due consideration to Securities available charged in the case is to be given, in case of secured and partially secured assets. In these accounts, MRA is to be calculated as under:
>
> MRA = 70% of the value of securities as per valuation certificate, issued in terms of Law Circular No. 171."

32. Does it satisfy the non-discriminatory clause laid down by the Reserve Bank of India and accepted by the Reserve Bank is the question. While making a deviation, the Board of Directors of a public sector bank could not have taken recourse to a policy decision which is per se discriminatory. Respondent – Bank is a 'State' within the meaning of Article 12 of the Constitution of India apart from the fact that it is bound to follow the guidelines issued by the Reserve Bank of India.

33. If, therefore, the broad policy decisions contained in

A the guidelines were required to be followed, the power of the Board of Directors to make deviation in terms of Clause 4 thereof would only be in relation to some minor matters which does not touch the broad aspects of the policy decision and in particular the one governing the non-discriminatory treatment. B In a case of this nature, we are satisfied that the respondent – Bank is guilty of violation of the equality clause contained in the Reserve Bank of India guidelines as also Article 14 of the Constitution of India.

C 34. The fact that the appellants were defaultors is not in dispute. It is also not in dispute that it comes within the purview of the Small and Medium Enterprises sector.

35. It is furthermore not in dispute that the respondent – Bank itself had made an offer to accept the proposal of the D appellants in regard to enforcement of one time settlement pursuant to the RBI guidelines. Indisputably, it was all along aware that the amount of securities was lying with it. It is only pursuant thereto the directions had been issued by the Tribunal

E 36. The question as to whether the guidelines issued by the Reserve Bank of India are binding or not now stands concluded by reason of a Constitution Bench Judgment of this Court in *Central Bank of India v. Ravindra and Others* [(2002) 1 SCC 367] in the following terms:

F "55... (5) The power conferred by Sections 21 and 35-A of the Banking Regulation Act, 1949 is coupled with duty to act. The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the G authority of issuing binding directions, having statutory force, in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. The Reserve Bank of India is one of the H watchdogs of finance and economy of the nation. It is, and

it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy."

37. Yet again in *Corporation Bank v. D.S. Gowda and Another* [(1994) 5 SCC 213], this Court held:

"17...As pointed out earlier, under the Banking Regulation Act wide powers are conferred on the Reserve Bank to enable it to exercise effective control over all banks. Sections 21 and 35-A enable it to issue directives in public interest to regulate the charging of interest on loans or advances made from time to time..."

38. We may, however, notice that a Division Bench of this Court without noticing the decision of the Constitution Bench in *Central Bank of India* (supra) in *Oriental Bank of Commerce v. Sunder Lal Jain and Another* [(2008) 2 SCC 280] opined as under:

"8. A perusal of the aforesaid revised guidelines issued by Reserve Bank of India on 29-1-2003 for compromise settlement of chronic non-performing assets (NPAs) of public sector banks will show that the same will be applicable and will cover NPAs classified as substandard as on 31-3-2000 which have subsequently become doubtful or loss. The revised guidelines have no application where the NPAs have not been classified as

A substandard as on 31-3-2000. It is not in dispute that the account of the respondents was a performing account between 1-4-2000 and 31-3-2001. According to the records of the Bank, the account was consigned to protest bill account on 15-10-2001 and was declared as NPA as B per prudential norms of RBI on 31-3-2001. The respondents contested the case before DRT and did not admit their liability. No such plea was raised that their account had become NPA as on 31-3-2000 before DRT. Therefore, the revised guidelines issued by Reserve Bank C of India on 29-1-2003 for compromise settlement of chronic non-performing assets (NPAs) of public sector banks were not at all applicable to the facts and circumstances of the case and no direction could be issued to declare the respondents' account as NPA from D 31-3-2000."

39. Judicial discipline mandates the bench comprising of two Judges to follow the judgments of the Constitution Bench having regard to Article 141 of the Constitution of India.

E 40. If in terms of the guidelines issued by the Reserve Bank of India a right is created in a borrower, we see no reason as to why a writ of mandamus could not be issued. We would assume, as has been contended by Mr. Singh, that while exercising its power under Article 226 of the Constitution of F India, the High Courts may or may not issue such a direction but the same, in our opinion, by itself, would not mean that the High Court would be correct in interfering with an order passed by the Appellate Tribunal which was entitled to consider the effect of such one time settlement.

G 41. The question pertaining to the present matter is regarding whether or not a circular issued by a statutory body for the governance and regulation of certain agreements confers a legal right upon the aggrieved party in case of non-compliance or complete and absolute deviation from the said H guidelines by the body formulating such circulars. Alternately,

can the aggrieved party, then, claim its right of judicial review under Article 32 or 226 to quash the said circular in case of discriminatory application of such rules/guidelines so mentioned in the circular.

42. In *Union of India and Anr. v. Azadi Bachao Andolan and Anr* [(2004) 10 SCC 1], it was held that a circular issued by the Central Board of Direct Taxes(CBDT) was not inconsistent with the provisions of the Income-Tax Act and was valid and efficacious. The assessing officers chose to ignore the guidelines and hence the CBDT was justified in issuing "appropriate guidelines" under Circular No. 789. The said Circular does not in any way crib, confine or cabin the powers of the assessing officers with regard to any particular assessment. It merely formulates broad guidelines to be applied in the matter of assessment of the assesses covered by the provisions of the Indo – Mauritius Double Taxation Avoidance Convention, 1983.

43. In *Commissioner of Income Tax v. Anjum M.H. Ghaswala and Ors.* [(2002) 1 SCC 633], it was pointed out that the circulars issued by CBDT under Section 119 of the Income Tax Act have statutory force and would be binding on every income-tax authority although such may not be the case with regard to press releases issue by the CBDT for information of the public.

44. In *UCO Bank v. CIT* [(1999) 4 SCC 599], this Court opined that "the circulars as contemplated therein cannot be adverse to the assessee." Thus, the authority which wields the power for its own advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in Section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest.

45. In *BSNL & anr. v. BPL Mobile Cellur Ltd. & ors.* [2008 (8) SCALE 106], it was held that "the direction contained in the

A said circular letters are relevant for the officers who are authorised not only to grant licenses but also enter into contracts and prepare bills. The circular letters having no statutory force undoubtedly would not govern the contract".

B A distinction, thus, must be made between statutory and non-statutory guidelines. A distinction must also be made between the circular which are relevant but not binding on the third parties and which are imperative in character.

46. As regards the Reserve Bank of India guidelines, it was C the direction of the Appellate Tribunal that the Respondent-Bank should settle the case of the appellants under the RBI guidelines through a One Time Settlement and should invite a proposal for settlement and recovery of the agreed amount.

D 47. The Appellate Tribunal in passing its order followed the dicta laid down in Constitution Bench judgment in *Central Bank of India* (supra), wherein it was held that:

> ".....RBI directive have not only statutory flavour, any contravention thereof or any default in compliance therewith E is punishable under sub-section (4) of S. 46 of the Banking Regulation Act, 1949".

48. We, therefore, are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. The F appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

N.J. Appeals allowed.

CHALLAMMA

v.

TILAGA & ORS.

(Civil Appeal No. 4961 of 2009)

JULY 31, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

HINDU MARRIAGE ACT, 1955:

s.5 – Marriage – Validity of – HELD: Besides the evidence brought on record to establish ingredients of a valid marriage, presumption can also be drawn having regard to the fact that a man and woman had been residing together for a long time and society accepted them as husband and wife – Evidence Act, 1872 – ss. 50 and 114.

SUCCESSION ACT, 1925:

s. 372 – Succession Certificate – Granted on the basis of evidence establishing that the deceased and the applicant had been residing together for a long period and the society accepted them as husband and wife – HELD: No exception can be taken to the finding of the trial court that applicant is wife of deceased – Nominee of the holder of a policy u/s 39 of Insurance Act could not be treated as equivalent to an heir – Amount of interest under the policy can be claimed by heir in accordance with law of succession governing the parties – Accordingly, mother of deceased has rightly been held by courts below to be entitled to 1/4th share only in his estate – Insurance Act, 1938 – s.39 – Hindu Marriage Act, 1955 – s.5 – Evidence Act, 1872 – ss. 50 and 114.

An application u/s 372 of the Succession Act, 1925 was filed by respondents no. 1 to 3 for grant of succession certificate after the death of one 'KS' which

A took place on 22.9.1988, stating that the deceased and respondent no. 1 married on 3.12.1984 and respondents 2 and 3 were their children. The appellant, the mother of the deceased, opposed the application stating that the deceased was not married at all. She was shown as the B sole nominee in four life insurance policies obtained by the deceased. The trial court on considering the oral and documentary evidence recorded a finding that the deceased and respondent no. 1 lived together for a period over 3 years and 9 months and the society C accepted them as husband and wife, and held that a presumption of valid marriage should be drawn. Accordingly, the application was allowed. The first appellate court, while upholding the judgment, held that the appellant was entitled to 1/4th share in the estate of the deceased. The revision petition of the appellant D having been rejected by the High Court, she filed the appeal.

On the question: whether respondent no. 1 was married to the deceased or not,

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Dismissing the appeal, the Court

HELD: 1.1. The question as to whether a valid marriage had taken place between the deceased and respondent no. 1 is essentially a question of fact. In F arriving at a finding of fact indisputably the trial court was not only entitled to analyze the evidences brought on record by the parties so as to come to a conclusion as to whether all the ingredients of a valid marriage as contained in s.5 of the Hindu Marriage Act, 1955 stood G established or not, a presumption of a valid marriage having regard to the fact that they had been residing together for a long time and were accepted in the society as husband and wife, could also be drawn. It is also well settled that a presumption of a valid marriage although

H

is a rebuttable one, it is for the other party to establish the same. Such a presumption can be validly raised having regard to s.50 of the Evidence Act, 1872. A heavy burden, thus, lies on the person who seeks to prove that no marriage has taken place. [Para 9 and 10] [837-C-D; 839-C-E]

Tulsi vs. Durghatiya **(2008) 4 SCC 520;** *Ranganath Parmeshwar Panditrao Modi vs. Eknath Gajanath Gajanan Kulkarni* **(1996) 7 SCC 681 and** *Sobha Hymavathi Devi vs. Setti Gangadhara Swamy* **(2005) 2 SCC 244, relied on.**

1.2. Respondent no. 1 deposed as PW-1 before the trial court wherein she not only stated in great details the factum of her marriage but also produced a document styled as an 'agreement of marriage' which was registered with the office of Sub-Registrar. If on the basis of the evidence on record, the trial court has arrived at a finding that the deceased had married respondent no. 1, no exception thereto can be taken. A long cohabitation and acceptance of the society of a man and woman as husband and wife goes a long way in establishing a valid marriage. [Para 8 and 10] [836-G-H; 838-A-B]

2.1. Section 39 of the Insurance Act, 1938 enables the holder of a policy, while effecting the same, to nominate a person to whom the money secured by the policy shall be paid in the event of his death. A nominee could not be treated as being equivalent to an heir or legatee. The amount of interest under the policy could, therefore, be claimed by the heirs of the assured in accordance with the law of succession governing them. [Para 11] [839-F; 840-B]

Vishin N. Khanchandani & Anr. Vs. Vidya Lachmandas Khanchandani & Anr. **(2006) 6 SCC 724; and** *Smt. Sarbati Devi & Anr. Vs. Ssmt. Usha Devi* **(1984) 1 SCC 424 – relied on.**

A **2.2. In view of the fact that the appellant is one of the heirs and legal representative of the deceased, she has been rightly held to be entitled to 1/4th share in the estate of the deceased. [Para 12] [840-F-G]**

B **Case Law Reference:**

(2008) 4 SCC 520	**relied on**	**para 10**
(1996) 7 SCC 681	**relied on**	**para 10**
(2005) 2 SCC 244	**relied on**	**para 10**
C **(2006) 6 SCC 724**	**relied on**	**para 11**
(1984) 1 SCC 424	**relied on**	**para 11**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. D 4961 of 2009.

From the Judgment & Order dated 17.1.2005 of the High Court of Karnataka at Bangalore in Civil Revision Petition No. 1115 of 2004.

E O.P. Chaturvedi and S.N. Bhat for the Appellant.

R.S. Hegde, Chandra Prakash, Rahul Tyagi (for P.P. Singh) for the Respondents.

The Judgment of the Court was delivered by

F

S.B. SINHA, J. Leave granted.

1. K.T. Subramanya (the deceased) was employed with Karnataka Power Corporation (for short, "KPC") at G Linganamakki. He took four life insurance policies from Life Insurance Corporation of India being dated 13.1.1987, 16.2.1987, 31.3.1987, and 3.6.1988. Indisputably, therein he nominated Challamma, his mother as the beneficiary thereof. The first respondent is said to have entered into a wedlock with the deceased on 3.12.1984. Subramanya died on 22.9.1988. H

2. Respondent Nos. 2 and 3 are said to be the sons of the deceased Subramanya and the first respondent herein. The respondents filed an application for grant of succession certificate in their favour in terms of Section 372 of the Indian Succession Act, 1925 (for short, "the Act") in the Court of Civil Judge, Sagar in respect of the scheduled debts. The said application was marked as P & S.C. 3/89. Appellant admittedly being the mother of the deceased filed an application for being impleaded as a party therein, which was allowed. She objected to the grant of the said succession certificate contending that the deceased was not married at all. The core question in view of the aforementioned stand taken by the appellant in the said proceedings was as to whether the first respondent was married to the deceased or not.

3. A large number of witnesses being P.Ws. 1 to 5, namely, Tilaga, first respondent herein (P.W.1), Muniyamma, the mother of respondent no.1 (P.W.2), Puttappa, father of the respondent No.1 (P.W.3), Y.M. Bangera, Administrative Officer, L.I.C. of India, Sagar (P.W.4) and Subba Rao B.R., the Personnel Officer of the K.P.C. (P.W.5) were examined by the respondents in support of their contention that the first respondent was married to the deceased.. A large number of documents including photographs showing performance of marriage ceremony were also filed. Inter alia on a finding that the first respondent and the deceased having been residing in a quarter together for a period of 3 years, 9 months and 19 days and furthermore having arrived at a finding of fact that the society accepted them as husband and wife, the learned trial judge held that a presumption of valid marriage should be drawn and on the basis thereof the application for grant of succession certificate filed by the respondents herein was allowed.

4. Appellant, aggrieved by and dissatisfied with the said judgment and order of the learned Civil Judge, preferred an appeal thereagainst in the court of District Judge, Shimoga

which was marked as Misc. Appeal No. 52 of 1995. The said appeal was eventually transferred to the Court of Additional District Judge. By reason of a judgment and order dated 1.3.2004, the learned First Appellate Court opined that the appellant was entitled to 1/4th share in the estate of the deceased while upholding the judgment and order of the learned trial judge that the marriage by and between the deceased and the first respondent was valid and the respondent Nos. 2 and 3 were their sons.

5. Still not satisfied, the appellant preferred Civil Revision Petition No. 1115 of 2004 before the High Court which by reason of the impugned judgment has been dismissed.

6. Mr. O.P. Chaturvedi, learned counsel appearing on behalf of the appellant would contend that the courts below committed a serious error in passing the impugned judgments insofar as they failed to take into consideration the evidences brought on record by the parties in their correct perspective. It was urged that keeping in view the provisions of the Hindu Marriage Act, 1955, it was obligatory on the part of the first respondent to establish that all the ingredients of a valid marriage were proved. In a case of this nature where the first respondent was a woman of easy virtue, it was urged, the presumption of a valid marriage ought not to have been drawn.

7. Mr. R.S. Hegde, learned counsel appearing on behalf of the respondent, on the other hand, would support the impugned judgment.

8. First respondent examined herself as P.W.1 before the learned trial judge. In her deposition she not only stated in great details the factum of her marriage which took place on 3.12.1984 at Dharmasthala but also produced a document styled as an 'agreement of marriage' which was registered with the office of Sub-Registrar, Sagar on 13.12.1984. She furthermore produced various documents to show that the deceased had insured his life with the Life Insurance

Corporation of India and also under group insurance while in service. Furthermore some documents were also brought on record to show that the deceased applied for allotment of a house as a married person.

Appellant examined herself as D.W.1. An officer of the Life Insurance Corporation of India was also examined to prove the life insurance policies.

9. The question as to whether a valid marriage had taken place between the deceased Subramanya and the first respondent is essentially a question of fact. In arriving at a finding of fact indisputably the learned trial judge was not only entitled to analyze the evidences brought on record by the parties hereto so as to come to a conclusion as to whether all the ingredients of a valid marriage as contained in Section 5 of the Hindu Marriage Act, 1955 stand established or not; a presumption of a valid marriage having regard to the fact that they had been residing together for a long time and has been accepted in the society as husband and wife, could also be drawn.

It is true, as has been contended by Mr. Chaturvedi, that the appellant had brought on record certain documents to show that the deceased in the year 1986 while applying for his employment in Mysore Power Corporation showed his status as 'single, but a specific finding of fact had been arrived at by the courts below that all the subsequent documents clearly showed that not only the deceased married the first respondent but also he sought for allotment of a quarter as a married person. It is of some significance to notice that one Subba Rao, a personnel officer of the KPC while examining himself as P.W.5 categorically stated that in terms of the rules for allotment of quarter by the company commonly known as 'Township Committee Rules' quarters were allotted to married persons only and clubbed accommodation were provided to the bachelors.

A 10. It is beyond any cavil of doubt that in determining the question of valid marriage, the conduct of the deceased in a case of this nature would be of some relevance. If on the aforementioned premise, the learned trial judge has arrived at a finding that the deceased Subramanya had married the first B respondent, no exception thereto can be taken. A long cohabitation and acceptance of the society of a man and woman as husband and wife goes a long way in establishing a valid marriage.

In *Tulsa v. Durghatiya* [(2008) 4 SCC 520], this court held:

C

"**11.** At this juncture reference may be made to Section 114 of the Evidence Act, 1872 (in short "the Evidence Act"). The provision refers to common course of natural events, human conduct and private business. The court may D presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of Sections 50 and 114 of the Evidence Act together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne E out by the facts of a particular case.

12. A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions, considered the scope of the presumption that could be drawn as to the relationship of marriage between F two persons living together. In first of them i.e. *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy.* Their Lordships of the Privy Council laid down the general proposition that: (AIR p. 187)

G

"... where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of H concubinage."

13. In *Mohabbat Ali Khan v. Mohd. Ibrahim Khan* Their Lordships of the Privy Council once again laid down that: (AIR p. 138) A

"The law presumes in favour of marriage and against concubinage, when a man and a woman have cohabited continuously for a number of years." B

14. It was held that such a presumption could be drawn under Section 114 of the Evidence Act."

It is also well settled that a presumption of a valid marriage although is a rebuttable one, it is for the other party to establish the same. {See *Ranganath Parmeshwar Panditrao Modi v. Eknath Gajanan Kulkarni* [(1996) 7 SCC 681], and *Sobha Hymavathi Devi v. Setti Gangadhara Swamy* [(2005) 2 SCC 244]}. C D

Such a presumption can be validly raised having regard to Section 50 of the Indian Evidence Act. [See *Tulsa* (supra)]

A heavy burden, thus, lies on the person who seeks to prove that no marriage has taken place. E

11. There is another aspect of the matter which cannot be lost sight of. Section 39 of the Insurance Act, 1938 enables the holder of a policy, while effecting the same, to nominate a person to whom the money secured by the policy shall be paid in the event of his death. The effect of such nomination was considered by this Court in *Vishin N. Khanchandani & Anr. Vs. Vidya Lachmandas Khanchandani & Anr.* [(2000) 6 SCC 724] wherein the law has been laid down in the following terms: F

"....The nomination only indicated the hand which was authorised to receive the amount on the payment of which the insurer got a valid discharge of its liability under the policy. The policy-holder continued to have an interest in the policy during his lifetime and the nominee acquired no sort of interest in the policy during the lifetime of the policy- G H

A holder. On the death of the policy-holder, the amount payable under the policy became part of his estate which was governed by the law of succession applicable to him. Such succession may be testamentary or intestate. Section 39 did not operate as a third kind of succession B which could be styled as a statutory testament. A nominee could not be treated as being equivalent to an heir or legatee. The amount of interest under the policy could, therefore, be claimed by the heirs of the assured in accordance with the law of succession governing them."

C In *Smt. Sarbati Devi & Anr. vs. Smt. Usha Devi* [(1984) 1 SCC 424], this Court held:

"4. At the outset it should be mentioned that except the decision of the Allahabad High Court in Kesari Devi v. D Dharma Dev on which reliance was placed by the High Court in dismissing the appeal before it and the two decisions of the Delhi High Court in *S. Fauza Singh v. Kuldip Sing and Uma Sehgal v. Dwarka Dass* Sehgal in all other decisions cited before us the view taken is that E the nominee under Section 39 of the Act is nothing more than an agent to receive the money due under a life insurance policy in the circumstances similar to those in the present case and that the money remains the property of the assured during his lifetime and on his death forms F part of his estate subject to the law of succession applicable to him...."

12. In view of the fact that the appellant was one of the heirs and legal representatives of the deceased Subramanya, there cannot be any doubt whatsoever that she had been rightly held G to be entitled to 1/4th share in the estate of the deceased Subramanya.

13. For the aforementioned reasons, the appeal is dismissed with costs. Counsel's fee assessed at Rs.5,000/-.

H R.P. Appeal dismissed.