[2023] 16 S.C.R. 695 : 2023 INSC 1076

SHAKTI YEZDANI & ANR.
v.
JAYANAND JAYANT SALGAONKAR & ORS.

Civil Appeal No. 7107 of 2017

DECEMBER 14, 2023

[HRISHIKESH ROY* AND PANKAJ MITHAL, JJ.]

Issue for consideration:

Whether a nominee of a holder of shares or securities appointed u/s. 109A of the Companies Act, 1956 read with the Bye-laws under the Depositories Act, 1996 is entitled to the beneficial ownership of the shares or securities subject matter of nomination to the exclusion of all other persons who are entitled to inherit the estate of the holder on testator's death as per the law of succession.

Companies Act, 1956 – s. 109A and s. 109B – Companies Act, 2013 – s. 72 – Depositories Act, 1996 – Byelaw 9.11.1 – Nomination of shares – Effect – Nominee of a holder of shares or securities appointed u/s. 109A if, entitled to the beneficial ownership of the shares or securities, upon the holder's death:

Held: Upon the holder's death, the nominee would not get an absolute title to the subject matter of nomination, and those would apply to the Companies Act, 1956 (pari materia provisions in Companies Act, 2013) and the Depositories Act, 1996 as well – Usual mode of succession is not to be impacted by such nomination – Legal heirs have not been excluded by virtue of nomination – Vesting of securities in favour of the nominee contemplated u/s. 109A of the Companies Act 1956 (pari materia s. 72 of Companies Act, 2013) and Bye-Law 9.11.1 of Depositories Act, 1996 is for a limited purpose – It is 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 – Object of introduction of nomination facility vide the Companies (Amendment) Act, 1999 was only to provide an impetus to the investment climate and ease the cumbersome process of obtaining various letters of succession, from different

* Author

authorities upon the shareholder's death – Nomination process, thus does not override the succession laws – There is no third mode of succession that the scheme of the Companies Act, 1956 and Depositories Act, 1996 aims or intends to provide – Thus, it is clear that the Companies Act does not deal with the law of succession – Impugned decision takes the correct view. [Paras 26, 44, 45, 46, 47]

Companies Act, 1956 – Companies (Amendment) Act, 1999 – Scheme, intent and object – Nomination under the Companies Act, 1956 vis-a-vis law of succession:

Held: 1956 Act does not contemplate a 'statutory testament' that stands over and above the laws of succession – 1956 Act is concerned with regulating the affairs of corporates and is not concerned with laws of succession – '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 – Submission of the appellants of nomination as a 'statutory testament' cannot be accepted because the Companies Act, 1956 does not deal with succession nor does it override the laws of succession – It is beyond the scope of the company's affairs to facilitate succession planning of the shareholder – In case of a will, it is upon the administrator or executor under the Succession Act, 1925, or in case of intestate succession, the laws of succession to determine the line of succession. [Para 41, 42]

Companies Act, 1956 – s. 109A – Effect of term 'vest' in s. 109A and Byelaw 9.11.1 under the Depositories Act, 1996:

Held: s. 109A of the 1956 Act (pari materia to s. 72 of the Companies Act, 2013) provides for vesting of shares/debentures of a share/debenture holder unto his nominee 'in the event of his death' – Byelaw 9.11.1 under the Depositories Act, 1996 provides for 'vesting' of the securities unto the nominee on the death of the beneficial owner – Use of the word 'vest' does not by itself, confer ownership of the shares/securities to the nominee – Vesting of the shares/securities in the nominee under the Companies Act, 1956 and the Depositories Act, 1996 is only for a limited purpose-to enable the Company to deal with the securities thereof, in the immediate aftermath of the shareholder's death and to avoid uncertainty as to the holder of the securities, which could hamper the smooth functioning of the affairs of the company. [Para 34, 35]

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Companies Act, 1956 – s. 109A – Non-obstante clause – Effect of:

Held: Non-obstante clause in s. 109A should be interpreted keeping in mind the scheme of the Act and the intent of introduction of nomination facility u/ss. 109A and 109B wherein emphasis was laid on building investor confidence and bringing the company law in tune with policies of liberalisation and deregulation – 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 – As per Bye-law 9.11.7 of the Depositories Act, 1996, the non-obstante clause confers overriding effect to the nomination over any other disposition/nomination 'for the purposes of dealing with the securities lying to the credit of deceased nominating person(s) in any manner' – Purpose of invoking such non-obstante clause is delineated and limited to the extent of enabling the depository to deal with the securities, in the immediate aftermath of the securities holder's death – Thus, non-obstante clause in both s. 109A(3) of the 1956 Act and Bye-law 9.11.7 of the Depositories Act, 1996 cannot be held to exclude the legal heirs from their rightful claim over the securities, against the nominee – Interpretation of statutes. [Paras 37, 38]

Interpretation of statutes – Rules of interpretation – Words and phrases – Interpretation of:

Held: General words and phrases used in a statute, regardless of their wide ambit, must be interpreted taking into account the objects of the statute – Clauses and sections within a statute are not to be read in isolation, but their textual interpretation is determined by the scheme of the entire statute – Non-obstante clause is to be considered on the basis of the context within which it is used. [Para 37]

Companies Act, 1956 – Scheme of 'nomination' under the 1956 Act as well as other comparable legislations-Government Savings Certificate Act 1959, the Banking Regulation Act, 1949, the Life Insurance Act, 1939 and the Employees Provident Fund and Miscellaneous Provisions Act, 1952 – Implication of – Stated. [Paras 24-26]

Harsha Nitin Kokate v. The Saraswat Co-operative Bank Limited and Others **(2010) SCC Online Bom 615;** *Sarbati Devi v. Usha Devi* **[1984] 1 SCR 992: (1984) 1 SCC 424;** *Vishin N. Khanchandani and Anr. v. Vidya Lachmandas Khanchandani & Anr.* **[2000] 2 Suppl. SCR 415: (2000) 6 SCC 724;** *Shipra Sengupta v. Mridual Sengupta & Ors* **[2009] 13 SCR 407: (2009) 10 SCC 680;** *Ramchander Talwar & Ors. v. Devendra Kumar Talwar & Ors.* **[2010] 11 SCR 897: (2010) 10 SCC 671;** *Nozer Gustad Commissariat v. Central Bank of India & Ors* **(1993) 1 Mah LJ 228;** *Antonio Joao Fernandes v. Asst. Provident Fund Commissioner* **(2010) 4 Mah LJ 751;** *Indrani Wahi v. Registrar of Cooperative Societies and Others* **[2016] 4 SCR 307: (2016) 6 SCC 440;** *Salomon v. Salomon & Co.***(1897) AC 22, 38;** *Fruits & Vegetable Merchant Union v. Delhi Improvement Trust* **[1957] SCR 1: AIR 1957 SC 344;** *Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu* **[1991] 2 SCR 531: 1991 Supp (2) SCC 228;** *Municipal Corpn. of Greater Bombay v. Hindustan Petroleum Corpn.* **[2001] 2 Suppl. SCR 50: (2001) 8 SCC 143;** *Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani* **[2000] 2 Suppl. SCR 415: (2000) 6 SCC 724;** *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.,* **(1987) 1 SCC 424: [1987] 2 SCR 1;** *R.S. Raghunath v. State of Karnataka* **(1992) 1 SCC 335: [1991] 1 Suppl. SCR 387;** *Shanker Raju v. Union of India* **(2011) 2 SCC 132: [2011] 2 SCR 1 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7107 of 2017.

From the Judgment and Order dated 01.12.2016 of the High Court of Bombay in AN No.313 of 2015 in NOM No.822 of 2014 in SN No.503 of 2014.

Abhimanyu Bhandari, Ms. Rooh-e-hina Dua, Arav Pandit, Harshit Khanduja, Advs. for the Appellants.

Rohit Anil Rathi, Mrs. Aditi Dani, Mrs. Ranu Purohit, Aniruddha A. Joshi, Rajeev Maheshwaranand Roy, Advs. for the Respondents.

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The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. Heard Mr. Abhimanyu Bhandari, learned counsel appearing for the appellants. Also heard Mr. Rohit Anil Rathi, learned counsel representing respondent no. 1. Mr. Aniruddha A. Joshi, learned counsel appears for respondent nos. 4, 6, 7 and 8.

2. The appellants and respondent nos. 1 to 9 are the legal heirs and representatives of an individual – Jayant Shivram Salgaonkar. The family patriarch executed a will on 27.06.2011 making provisions for the devolution of his estates upon the successors. Apart from the properties mentioned in the will, the testator had certain fixed deposits (FDs) for the sum of Rs. 4,14,73,994/- in respect of which the respondent nos. 2, 4 and appellant no. 2 were made nominees. Additionally, there were certain mutual fund investments (MFs) of the amount of Rs. 3,79,03,207/- in respect of which appellants and Jay Ganesh Nyas Trust (respondent no. 9) were made nominees. The testator Jayant Shivram Salgaonkar passed away on 20.08.2013.

3. On 29.04.2014, the respondent no. 1 filed Suit No. 503/2014 with the prayer for declaration *inter alia* that the properties of the testator may be administered under the court's supervision and seeking absolute power to administer the same. He also prayed for permanent injunction restraining all other respondents and appellants from disposing, transferring, alienating, assigning and/or creating any third-party interests in respect of the properties in Exhibit A.

4. In their reply to the notice of motion in Suit No. 503/2014, the appellants pleaded that they were the sole nominee(s) to the MFs. The essence of their claim was that the appellants being nominees were absolutely vested with the securities on the testator's death. The appellant no.2 was additionally nominated and entitled to the FDs of the testator in the IDBI Bank. It was also the appellants' contention that nominations made under/in Jayant Shivram Salgaonkar's MFs/shares were made as per *Section 109A & 109B of Companies Act, 1956 and bye-law 9.11.7 of the Depositories Act, 1996. Section 109A and 109B of the Companies Act, 1956* must be read as a code in themselves, wherein the meaning of words '*vest*' and '*nominee*' are to be seen from the statute alone bearing in mind the *non-obstante* clause contained therein. Therefore, the provisions should be interpreted without reference to any outside consideration.

5. On 31.03.2015, the learned Single Judge of the Bombay High Court while passing the order in the Notice of Motion mainly considered whether the law laid down in the case of *Harsha Nitin Kokate v. The Saraswat Co-operative Bank Limited and Others*[1] was *per incuriam*. Further, the contentions of the appellants were rejected by the court by observing that *S. 109A & S. 109B of the Companies Act, 1956* cannot be read in a vacuum and it is permissible for the court to look at *pari materia* provisions in other statutes. The court, while considering the argument of a '*statutory testament*' raised in *Sarbati Devi v. Usha Devi*[2], expressly negated those and opined that it would not be proper to limit the ratio in *Sarbati Devi (supra)* to the narrow confines of *Section 39 of the Insurance Act, 1939*. The same was thereafter reaffirmed in *Vishin N. Khanchandani and Anr. v. Vidya Lachmandas Khanchandani & Anr.*[3], *Shipra Sengupta v. Mridual Sengupta & Ors.*[4], *Ramchander Talwar & Ors. v. Devendra Kumar Talwar & Ors.*[5], *Nozer Gustad Commissariat v. Central Bank of India & Ors.*[6] *and Antonio Joao Fernandes v. Asst. Provident Fund Commissioner*[7]. According to the learned judge, the decision in *Kokate (supra)* failed to consider the decision of the Supreme Court in *Khanchandani (supra), Shipra Sengupta (supra)* or even those of the Single Judge of the Bombay High Court in *Nozer Gustad Commissariat (supra) and Antonio Joao Fernandes (supra)*, although each of these decisions were binding on the court, while it was deciding *Kokate*.

6. It was accordingly expressed that the decision in *Kokate (supra)* is *per incuriam* as it was rendered without considering relevant and binding precedents. The learned Judge also opined that the fundamental focus of *S. 109A & S. 109B of the Companies Act, 1956* and *Bye-law 9.11.7 of the Depositories Act* is not the law of succession nor it is intended to restrict the law of succession in any

1 (2010) SCC Online Bom 615.
2 (1984) 1 SCC 424
3 (2000) 6 SCC 724
4 (2009) 10 SCC 680
5 (2010) 10 SCC 671
6 (1993) 1 Mah LJ 228
7 (2010) 4 Mah LJ 751

manner. Addressing the mischief that was sought to be avoided by the two statutory provisions, the court observed that it was intended to afford the company or the depository in question, a legally valid quittance so that it does not remain answerable forever to succession litigations and endless slew of claims under the succession law. It was therefore opined that the statutory provisions allow for the liability to be moved from the company or the depository to the nominee but the nominee continues to hold the shares/securities in fiduciary capacity and is also answerable to all claims in the succession law.

7. With the above understanding of the legal provisions, the learned Judge declared that the view in *Kokate (supra)* generates inconsistencies as it renders a nomination under the *Companies Act* the status of a '*superwill*' that is bereft of the rigour applicable to a will for its making or the test of its validity under the *Indian Succession Act, 1925.* According to the ruling, *S. 109A & S. 109B of the Companies Act, 1956* and the *Bye-law 9.11 of the Depositories Act, 1996* does not displace the law of succession nor does it stipulate a third line of succession.

8. Even while declaring *Kokate (supra)* to be *per incuriam,* it was made clear that the aforesaid judgment (31.3.2015) does not dispose of the Notice of Motion No. 822/2014 in Suit No. 503/2014 and Chamber Summons No. 72/2014 in Testamentary Petition No. 457/2014 and those were posted for final hearing on the basis of the law as declared.

9. The appellants being aggrieved by the decision (dated 31.3.2015) of the learned Single Judge, filed Appeal No. 313/2015 to challenge the order. Appeal No. 311/2015 was also filed in the Testamentary Petition No. 457/2014.

10. While dealing with the appeals, the Division Bench at the outset noticed that the consideration to be made is whether the view taken by the learned Single Judge vis-a-vis the *Kokate (supra)* judgment is the correct opinion. Accordingly, the following questions were formulated for decision in the appeals:

"(i) Whether a nominee of a holder of shares or securities appointed under Section 109A of the Companies Act, 1956 read with the Bye-laws under the Depositories Act, 1996 is entitled to the beneficial ownership of the shares or securities subject matter of nomination to the exclusion of all other persons who are entitled to inherit the estate of the holder as per the law of succession?

(ii) Whether a nominee of a holder of shares or securities on the basis of the nomination made under the provisions of the Companies Act, 1956 read with the Byelaws under the Depositories Act, 1996 is entitled to all rights in respect of the shares or securities subject matter of nomination to the exclusion of all other persons or whether he continues to hold the securities in trust and in a capacity as a beneficiary for the legal representatives who are entitled to inherit securitie or shares under the law of inheritance?

(iii) Whether a bequest made in a Will executed in accordance with the Inidan Succession Act, 1925 in respect of shares or securities of the deceased supersedes the nomination made under the provisiosn of Sections 109A and Bye Law No. 9.11 framed under the Depositories Act, 1996?"

11. To appreciate the precise ratio in *Kokate (supra),* the following two paragraphs of the *Kokate* judgment were extracted by the Division Bench:

"24. In the light of these judgments section 109A of the Companies Act is required to be interpreted with regard to the vesting of the shares of the holder of the shares in the nominee upon his death. The act sets out that the nomination has to be made during the life time of the holder as per procedure prescribed by law. If that procedure is followed, the nominee would become entitled to all the rights in the shares to the exclusion of all other persons. The nominee would be made beneficial owner thereof. Upon such nomination, therefore, all the rights incidental to ownership would follow. This would include the right to transfer the shares, pledge the shares or hold the shares. The specific statutory provision making the nominee entitled to all the rights in the shares excluding all other persons would show expressly the legislative intent. Once all other persons are excluded and only the nominee becomes entitled under the statutory provision to have all the rights in the shares, none other can have it. Further, section 9.11 of the Depositories Act 1996 makes the nominee's position superior to even a testamentary disposition. The non-obstante Clause in section 9.11.7 gives the nomination the effect of the Testamentary Disposition itself. Hence, any other disposition or nomination under any other law stands subject to the nomination made under the Depositories Act. Section 9.11.7 further shows that

the last of the nominations would prevail. This shows the revocable nature of the nomination much like a Testamentary Disposition. A nomination can be cancelled by the holder and another nomination can be made. Such later nomination would be relied upon by the Depository Participant. That would be for conferring of all the rights in the shares to such last nominee.

25. A reading of section 109A of the Companies Act and bye-law 9.11 of the Depositories Act makes it abundantly clear that the intent of the nomination is to vest the property in the shares which includes the ownership rights thereunder in the nominee upon nomination validly made as per the procedure prescribed, as has been done in this case. These sections are completely different from section 39 of the Insurance Act set out (supra) which require a nomination merely for the payment of the amount under the Life Insurance Policy without confirming any ownership rights in the nominee or under section 30 of the Maharashtra Cooperative Societies Act which allows the Society to transfer the shares of the member which would be valid against any demand made by any other person upon the Society. Hence these provisions are made merely to give a valid discharge to the Insurance Company or the Co-operative Society without vesting the ownership rights in the Insurance Policy or the membership rights in the Society upon such nominee. The express legislature intent under section 109A of the Companies Act and section 9.11 of the Depositories Act is clear."

12. The Division Bench under the impugned judgment (dated 01.12.2016) observed that the object and provisions of the *Companies Act, 1956* is not to either provide a mode of succession or to deal with succession at all. The object of *S. 109A Companies Act, 1956* is to ensure that the deceased shareholder is represented, as the value of the shares is subject to market forces and various advantages keep on accruing to the shareholders, such as allotment of shares & disbursement of dividends. Moreover, a shareholder is required to be represented in the general meetings of the Company and therefore, the court opined that the provision is enacted to ensure that commerce does not suffer due to delay on part of the legal heirs in establishing their rights of succession and then claiming shares of a Company. Adverting to and interpreting the *pari materia* provisions relating to nominations under various statutes, the Division Bench felt that the consistent view in the various judgments of the Supreme Court and the Bombay High Court must be followed and those do not warrant any departure. It was expressly opined that the so-called 'vesting' under *S. 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. In fact, the *Companies Act, 1956* has nothing to do with the law of succession. Accordingly, the Division Bench declared 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. Answering the third question, the Division Bench 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 *S. 109A* of *Companies Act* and *Bye-law 9.11* framed under the *Depositories Act, 1996.* The bench accordingly ruled that an incorrect view was taken in *Kokate (supra).*

13. The object of *S. 109A(3)* of the *Companies Act, 1956,* according to the Division Bench, is not materially different from *S. 6(1) of the Government Savings Certificates Act, 1959 and S. 109B* of the *Companies Act, 1956* is likewise similar to *S. 45-ZA(2) of the Banking Regulation Act, 1949.* The law relating to *S. 6(1) of the Government Savings Certificates Act, 1959* has already been settled in the case of *N. Khanchandani (supra)* where the Supreme Court upheld the law declared in *Sarbati Devi (supra).*

14. Looking at the provisions relating to nominations under different statutory enactments and the way the courts have interpreted those to the effect that the nominee does not get absolute title to the property which is the subject matter of nomination, the Division Bench interpreting the provisions under *S. 109A & S. 109B Companies Act, 1956* declared that they do not override the law in relation to testamentary or intestate succession. The judgment in *Kokate (supra)* was declared to be incorrect as it failed to consider the law laid down in *Khanchandani* (supra) and *Talwar (supra)* as these cases preceded *Kokate (supra).*

ARGUMENTS

15. The learned counsels for the appellants and the respondents put forth the following arguments for consideration:

15.1 Mr. Abhimanyu Bhandari, the learned counsel for the appellants argues that the scheme of nomination as provided in the *Companies Act, 1956* is not analogous to nomination as provided under other legislations. Unlike in other legislations, the term '*vesting'* & '*to the exclusion of others'* along with a '*non-obstante clause'* are placed together in the *Companies Act, 1956.* Therefore, it would be incorrect to rely on the ratio of the judgments pertaining to other legislations (such as the *Insurance Act, 1939, Banking Regulation Act, 1949, National Savings Certificates Act, 1959, Employees Provident Fund and Miscellaneous Provisions Act, 1952*) to then interpret the provisions of *S. 109A & S. 109B* of the *Companies Act, 1956.* Provisions pertaining to the same in other legislations cannot be the basis for interpretation of the term '*nomination'* under the Companies Act as those are not *pari materia* with *S. 109A & S. 109B* (now *S. 72 of the Companies Act, 2013*) of the *Companies Act, 1956.*

15.2 It is contended that *S. 109A & S. 109B* (now *S. 72 of the Companies Act, 2013*) introduced in the *Companies Act, 1956* by the legislature on 31.08.1988 with the language so used makes it clear that a nominee, upon the death of the shareholder/debenture holder, will secure full and exclusive ownership rights in respect of the shares/debentures for which he/she is the nominee. In fact, adverting to the hierarchy laid down under the provision, shareholding in an individual capacity (*S. 109A(1)*), then a joint shareholder owning the shares jointly (*S. 109A(2)*) and then finally, a nominee (*S. 109A(3)*) in whom the shares shall vest in the event of death of the shareholder/joint shareholders, it is contended that the intent is clear that such nomination would trump any disposition, whether testamentary or otherwise.

15.3 It is further contended that *S. 187C & S. 109A(3)* of *the Companies Act, 1956* have to be read together, to mean that shares shall '*vest*' with the nominee to the exclusion of all other persons unless nomination is varied or cancelled. It is argued that *S. 187C* itself provides for the mechanism to vary the nomination by making appropriate declaration and therefore, these provisions are to be understood as complete codes within themselves. When read together, no declaration varying the nomination would imply that the intention was to grant beneficial ownership of the shares to the appellants through a mechanism of nomination of rights. As Mr. Jayant S. Salgaonkar's Will had categorically mentioned all other properties of the deceased except the shares for which the appellants were named as nominees, the implication is naturally that the ownership rights of such shares would pass on to the nominees after the death of the testator i.e., the appellants' grandfather.

15.4 The learned counsel for appellants would then refer to *Bye-law 9.11 of the Depositories Act, 1996* which provides for transmission of securities in case of nomination. Within the provision, the presence of a *non-obstante* clause would reasonably imply that the effect of nomination under the said bye-law is that it would vest in the nominee a complete title of the shares notwithstanding anything contained in the testamentary disposition(s) or nomination(s) made under other laws dealing with securities.

15.5 In addition, it is argued that the nomination for shares i.e., *Form SH-13* provided under *Rule 19(1) of the Companies (Share Capital & Debentures) Rules, 2014* indicates that the shareholder or joint shareholder may nominate one or more persons as nominee in whom all rights of the holder shall vest. Since such nomination can also be in the favour of a third party or a minor (who can never be a trustee or executor), it is argued that the legislature under the *Companies Act* intended to give complete ownership to the nominee.

15.6 Mr. Bhandari then refers to *Regulation 29A of SEBI (Mutual Funds) Regulations, 1996,* by virtue of which an asset management company is required to provide the option to its unit holder to nominate a person in whom all rights of the units shall vest in the event of the death of the unit holder. It is contended that when a joint shareholder cannot make any change to the nomination without the consent of the other joint shareholder (since such shares continue in the ownership of the remaining shareholders in the event of the death of one of the shareholders), the same cannot be done by way of a Will or testamentary disposition or law of succession either.

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15.7 Therefore, as per Mr. Bhandari, the interpretation accorded by the High Court is not in sync with the developments of law intended by insertion of *S. 109A* & *S. 109B* to the *Companies Act, 1956.* The ease of succession planning which the legislature intended would be rendered otiose if the interpretation given by the High Court on the implication for the nominee under *S. 109A* & *S. 109B* of the *Companies Act* is accepted.

16. Canvassing the opposite view, Mr. Rohit Anil Rathi, the learned counsel appearing for Respondent No. 1 would argue that on account of the consistent view taken by this Court while interpreting various legislative enactments pertaining to nominations and more particularly, in view of the latest interpretation in the case of *Indrani Wahi v. Registrar of Cooperative Societies and Others*[8], departure from the consistent view is not warranted and '*vesting'* provided under *S. 109A* would not create a third mode of succession.

16.1 The learned counsel submits that the *Companies Act* has nothing to do with the law of succession. In support of his contention, Mr. Rathi would refer to *Part IV of the Companies Act, 1956* which deals with share capitals and debentures as well as *S. 108* to *S. 112* in Part IV which relate to '*transfer of shares and debentures*'. Adverting to the aforesaid provisions, it is argued that the limited object is to provide a facility for transfer of shares or debentures through a proper instrument of transfer and consequential actions such as registration and in case of grievances, appeal thereof. The introduction of *S. 109A* & *S. 109B* merely provides for facility of nomination aiding in the process of such transfer. Therefore, no third mode of succession by way of nomination has been contemplated and the position has remained unaltered, despite numerous amendments made to the *Companies Act* from time to time.

16.2 On the other hand, the object behind the *Indian Succession Act, 1925* is to provide for an act to consolidate and amend the law applicable to intestate and testamentary succession. It is argued by Mr. Rathi that the legislature in no uncertain terms recognised a transfer being made by a legal representative

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as a valid mode of transfer and the legal representative is vested with the properties of the deceased as a custodian subject to devolution in terms of the applicable law i.e., the *Indian Succession Act, 1925* as per *S. 211* within *Part VIII* of the same.

16.3 Further, it is argued by the learned counsel for the Respondent No. 1 that the terms '*transfer', 'transmission' and 'transmission by operation of law'* are distinct and convey different meanings*, i*.e., transfer *inter vivos* in case of the term '*transfer'* and devolution by operation of law in case of '*transmission'*. Since these phrases have been retained even under the *Companies Act, 2013*, there is no alteration of the position of law on transfer and transmission of securities. In addition, several provisions provide an unfettered power to a company to register any person to whom rights to shares/debentures had been transmitted by operation of law as a shareholder/debenture holder (second proviso*, S. 108 of the Companies Act, 1956*). Moreover, there is an obligation to inform the transferor, transferee or the person who gave intimation of transfer, the reason for refusing the registration or transmission by operation of law (*S. 111 of the Companies Act, 1956*).

17. Mr. Aniruddha Joshi, learned counsel for the Respondent Nos. 4 and 6 to 8 would argue that in light of the consistent view taken by this Court and most High Courts on the question of nominee not becoming a full owner of the estate of which he has been nominated by the deceased owner of the property, the nominee by virtue of *S. 109A & S. 109B of the Companies Act, 1956* cannot impact the rights of the legal heirs/legatees obtained through application of the succession law.

17.1 The learned counsel accepts the position that the languages used in the enactments interpreted by the court are not alike. Some enactments possess a *non-obstante* clause while some do not. Few use the term '*vest*' while others do not. However, since none of the Acts define the terms '*nominee*' and '*nomination'*, it is contended by Mr. Joshi that those terms are to be considered as ordinarily understood by persons making the nomination, for their moveable or immovable properties.

17.2 Mr. Joshi therefore argues that the term '*vest*' must be understood in a limited sense and would not necessarily confer ownership. Addressing the implication of the *non-obstante* clause in the *Companies Act*, the counsel submits that the same is intended to offer a discharge to the company and to facilitate the company in their dealings after the death of the shareholder/securities holder. More specifically, it is to protect the company from being dragged into a succession litigation. Therefore, the term '*vest*' must be interpreted in a limited sense to the effect that the nominee would deal with the company but not in the capacity as a title holder but more in the nature of a trustee holding the estate for the lawful successor(s) and would be accountable to the successor(s) of the estate. In the same context, the term '*vest*' as used in the *Indian Succession Act, 1925* would be understood to mean that neither the administrator nor the executor would become the owner of the property. Such vesting is therefore limited to the specific purpose of distribution of the estate amongst the lawful successor(s).

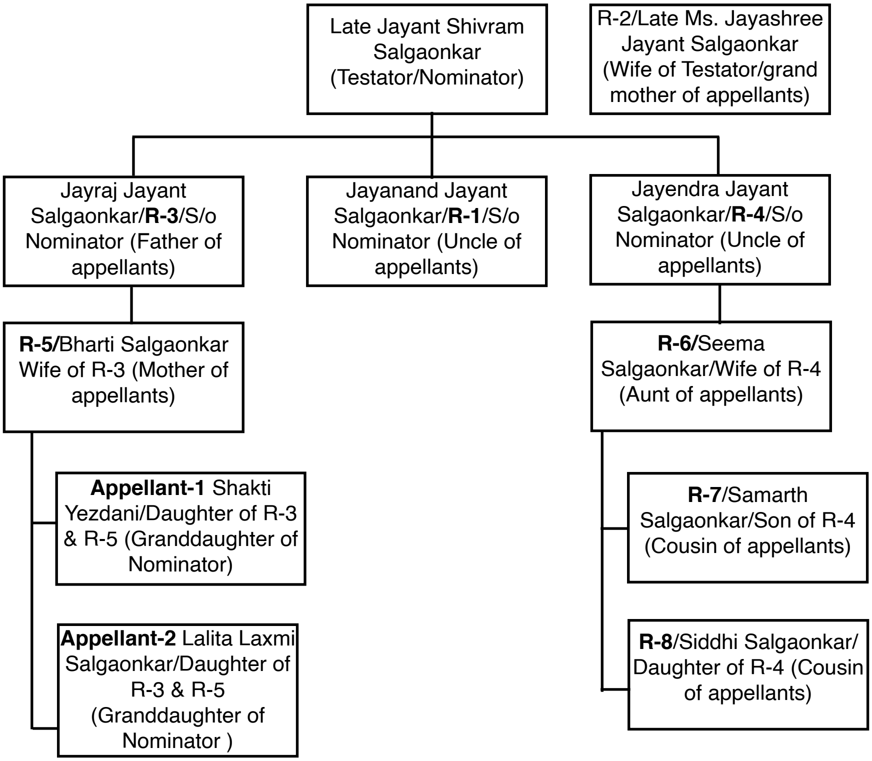
17.3 The counsel submits that the *Companies Act, 1956* and/or the *Companies Act, 2013* is referable to *Entry 43* and/or *Entry 44* of *List I, Schedule VII* of the Constitution which provide for incorporation, regulation and winding up of companies. Therefore, the legislation deals with the limited aspects of birth of a legal entity/company, its management/the affairs of the company and its death/winding up of the company. It was argued that the widest interpretation of the same would still not attract or cover succession or estate planning of an individual, even if the said person were to be a member of a company. On the other hand, the *Indian Succession Act, 1925* or *Hindu Succession Act, 1956* or other enactments pertaining to succession relate to *Entry 5* in *List III, Schedule VII* of the Constitution. Therefore, their source of power is entirely different. In light of the same, it is argued that a third mode of succession not contemplated by laws would be provided through an interpretative exercise instead of a legislative exercise.

17.4 As per Mr. Joshi, if the contention of appellants were to be accepted, nomination would be rendered similar to a '*will*' or a '*testamentary disposition*' to the extent of securities, of a particular company. However, the *Indian Succession Act,* *1925* prescribes a detailed judicial process to obtain letters of administration or succession certificates or probates, as the case may be. Therefore, in case the contentions of the appellants are accepted, the judicial process for determination of successors' rights would not be required at all and the nominee(s) would be able to claim the estate without verification of the claimants' rights by the prescribed judicial process.

17.5 Finally, it is submitted that as per Article 141 of the Constitution, only this Court's interpretation on provisions become binding. It cannot however be said that the legislature has taken note of the interpretation of the High Court judgment and accepted the interpretation.

DISCUSSION

18. Before we proceed any further, it would be appropriate to indicate the position of the contesting parties vis-à-vis the testator, Jayant Shivram Salgaonkar.



19. Having considered the submissions and the materials placed on record, the following issues require our careful attention and have been discussed at length below:

(i.) The scheme, intent & object behind the *Companies (Amendment) Act, 1999*,

(ii.) The implication of the scheme of '*nomination'* under the *Companies Act, 1956* as well as other comparable legislations,

(iii.) The use of the term '*vest'* and the presence of the *non-obstante* clause within the provisions of the *Companies Act, 1956*,

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

SCHEME OF THE COMPANIES ACT

20. Both sides' lawyers have relied on the intent & purpose behind the introduction of *S. 109A & S. 109B* in the larger context of the *Companies Act, 1956* or the *pari materia* provisions (*Section 72, Companies Act, 2013*) in support of their respective stand. Having perused the scheme behind the *Companies Act, 1956* and the *Companies (Amendment) Act, 1999* that also introduced *S. 109A & S. 109B* of the *Companies Act, 1956,* the relevant extracts are reproduced as follows:

"*…………….2. (b) to provide for nomination facility to the holders of shares, debentures and fixed deposit holders;……………………………*

……………………. 3. The corporate sector is going through difficult times. The capital market is also at low ebb, which requires immediate morale boosting efforts on the part of the Government to promote investors' confidence. Besides, the economy needs certain impetus for promoting inter-corporate investments considering slow flow of funds in new investments. In order to overcome these adverse conditions faced by the corporate sector. it was felt that the company should be permitted to buy-back their own shares, to make investments or loans freely without prior approval of the Central Government, to provide for nomination facility to the holders of shares, deposits and debentures and also to make provision in law for establishment of Investors Education and Protection Fund

broadly on the line of provisions contained in the Companies Bill, 1997………………………………….."[9]

"…………… Under the Companies (Amendment) Act, 1999, the shareholders have been allowed to nominate a person for their shares, debentures and deposits………. Earlier, holders of shares and debentures in a company did not enjoy the nomination facility for shares, debentures and deposits, which caused hardships to them. They were required to obtain a letter of succession from the competent authority. The facility of nomination is intended to make the company law in tune with the present-day economic policies of liberalisation and deregulation. This is also intended to promote investors' confidence in capital market and to promote the climate for inter-corporate investment in the country."[10]

21. 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.

22. At this juncture, it would hold us in good stead to note what the Court succinctly held in *Salomon v. Salomon & Co.*[11]:

"In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

9 Statement of Objects & Reasons, The Companies (Amendment) Act 1999
10 Press Information Bureau, Press Release, July 23, 1999
11 (1897) AC 22, 38

In this context, the act of the legislature to enact *S. 109A* in the *Companies Act, 1956* and provide a nomination facility to holders also aids in ascertaining the intent. The *Companies Act, 1956* and subsequent amendments as parliamentary legislations are rooted in *Entry 43, List I* of *Seventh Schedule,* which deals with incorporation, regulation and winding up of corporations. There is no mention of nomination and/or succession within the provisions or the statement of objects & reasons or any other material pertaining to the *Companies Act, 1956.* Same is also not seen in subsequent amendments to the Act.

23. Reading the provision of nomination within the *Companies Act, 1956* with the broadest possible contours, it is not possible to say that the same deals with the matter of succession in any manner. There is no material to show that the intent of the legislature behind introducing a method of nomination through the *Companies (Amendment) Act, 1999* was to confer absolute title of ownership of property/shares, on the said nominee.

24. In fact, while interpreting other enactments that are similar in nature by virtue of the fact that the provision of nomination within the statute begins with a *non-obstante* clause and/or is armed with the term '*vest*' such as the (*Banking Regulation Act, 1949, the Government Savings Certificate Act, 1959 and/or the Employees Provident Fund Act, 1952*), multiple courts have rejected the argument that the nominee would become the absolute owner to the exclusion of the legal heirs. To hold otherwise would, in our opinion, exceed the scope and extent of *S. 109A* of the *Companies Act, 1956.*

NOMINATION UNDER VARIOUS LEGISLATIONS

25. In an illuminating list of precedents, this Court as well as several High Courts have dealt with the concept of '*nomination*' under legislations like the *Government Savings Certificate Act 1959, the Banking Regulation Act, 1949, the Life Insurance Act, 1939 and the Employees Provident Fund and Miscellaneous Provisions Act, 1952*. It would be apposite to refer to what the Court said on nomination, in reference to these legislations:

Case Law/Precedent	Held
Sarbati Devi & Anr. v. Usha Devi[12]	Nomination under *S. 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[13]	Nomination under *S. 10(2) of the EPF & Misc. Provisions Act 1952* cannot be made in favour of a non-family person. Relied upon *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 & Anr. v. Vidya L. Khanchandani[14]	Nominee entitled to receive the sum due on the savings certificate under *S. 6(1) of the Govt. 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 & Anr. v. Devender Kumar Talwar & Ors.[15]	Nomination made under provisions of *S. 45ZA of the Banking Regulation Act 1949* entitled the nominee to receive the deposit amount on the death of the depositor.

26. A consistent view appears to have been taken by the courts, while interpreting the related provisions of nomination under different statutes. 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. In other words, the usual mode of succession is not to be impacted by such nomination. The legal heirs therefore have not been excluded by virtue of nomination.

27. The presence of the three elements i.e., the term '*vest*', the provision excluding others as well as a *non-obstante* clause

12 (1984) 1 SCC 424
13 (1993) 1 Mah LJ 228
14 (2000) 6 SCC 724
15 (2010) 10 SCC 671

under S.*109A of the Companies Act, 1956* have not persuaded us in the interpretation to be accorded vis-à-vis nomination, in any different manner. Different legislations with provisions pertaining to nomination that have been a subject of adjudication earlier before courts, have little or no similarity with respect to the language used or the provisions contained therein. While the *Government Savings Certificates Act, 1959, Banking Regulation Act, 1949 and Public Debts Act, 1944* contain a *non-obstante* clause, the *Insurance Act, 1939* and *Cooperative Societies Act, 1912* do not.

28. Similarly, there are variations with respect to the word '*vest*' being present in some legislations (the *Employees Provident Fund Act, 1952*) and absent in others (*the Insurance Act, 1939*, the *Cooperative Societies Act, 1912*). Looking at the dissimilarities and the fact that uniform definition is not available relating to the rights of '*nominee*' and/or whether such '*nomination*' bestows absolute ownership over nominees, it is only appropriate that the terms are considered as ordinarily understood by a reasonable person making nominations, with respect to their movable or immovable properties. 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.

29. 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.

EFFECT OF '*VEST*' IN *S. 109A OF THE COMPANIES ACT, 1956 & BYE-LAW 9.11.1 OF THE DEPOSITORIES ACT, 1996*

30. The appellants' case is grounded in the interpretation of the term '*vest'* in *Section 109A of the Companies Act, 1956* and *Bye-law 9.11.1 under the Depositories Act, 1996*, and according to them, the use of the term '*vest*' indicates the intent to bestow ownership of the securities upon the nominee on the shareholder's death. To address the aforesaid argument, it is apposite to note how the term '*vest*' or '*vesting*' has been defined by the courts, from time to time.

31. In *Fruits & Vegetable Merchant Union v. Delhi Improvement Trust*,[16] the Supreme Court held that the term '*vest*' has a variety of meanings dependent on the context within which it operates.

"11. . . . . . . In this chapter occur Sections 45 to 48 which provide for the vesting of certain properties in the Trust. Section 45 lays down the conditions and the procedure according to which any building, street, square or other land vested in the Municipality or Notified Area Committee may become vested in a Trust. Similarly, Section 46 deals with the vesting in the Trust of properties like a street or a square as are not vested in a Municipality or Notified Area Committee. These sections, as also Sections 47 and 48 make provision for compensation and for empowering the Trust to deal with such property vested in it. The vesting of such property is only for the purpose of executing any improvement scheme which it has undertaken and not with a view to clothing it with complete title. As will presently appear, the term "vesting" has a variety of meaning which has to be gathered from the context in which it has been used. It may mean full ownership, or only possession for a particular purpose, or clothing the authority with power to deal with the property as the agent of another person or authority."

(Emphasis supplied)

32. In *Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu*,[17] this Court considered the question of the effect of

16 AIR 1957 SC 344
17 1991 Supp (2) SCC 228

'*vesting*' under *S. 85* of the *AP Gram Panchayat Act, 1964* of the water works & appurtenant land on the Gram Panchayat. It was held that the word '*vesting'* in *S. 85* did not confer absolute title on the Gram Panchayat. Even after vesting, the Government, in appropriate cases, was amenable to place restrictions on the Gram Panchayat on enjoyment of such waterworks & lands. It is apposite to refer to the discussion at para 10, wherein the varied meaning of the term '*vest*' was considered:

"10. The word 'vest' clothes varied colours from the context and situation in which the word came to be used in a statute or rule. Chamber's Mid-Century Dictionary at p. 1230 defines 'vesting' in the legal sense "to settle, secure, or put in fixed right of possession; to endow, to descend, devolve or to take effect, as a right". In Black's Law Dictionary, (5th edn. at p. 1401) the meaning of the word 'vest' is given as : "to give an immediate, fixed right of present or future enjoyment; to accrue to; to be fixed; to take effect; to clothe with possession; to deliver full possession of land or of an estate; to give seisin; to enfeoff". In Stroud's Judicial Dictionary, (4th edn., Vol. 5 at p. 2938), the word 'vested' was defined in several senses. At p. 2940 in item 12 it is stated thus "as to the interest acquired by public bodies, created for a particular purpose, in works such as embankments which are 'vested' in them by statute", see Port of London Authority v. Canvey Island Commissioners [(1932) 1 Ch 446] in which it was held that the statutory vesting was to construct the sea wall against inundation or damages etc. and did not acquire fee simple. Item 4 at p. 2939, the word 'vest', in the absence of a context, is usually taken to mean "vest in interest rather than vest in possession". In item 8 to 'vest', "generally means to give the property in". Thus the word 'vest' bears variable colour taking its content from the context in which it came to be used."

(Emphasis supplied)

33. In *Municipal Corpn. of Greater Bombay v. Hindustan Petroleum Corpn.,*[18] it was observed that the term '*vesting'* is capable of bearing the meaning of limited vesting, in title as well as possession, and is

18 (2001) 8 SCC 143

referrable to the context and situation within which it operates. The above would suggest that the word '*vest'* has variable meaning and the mere use of the word *'vest'* in a statute does not confer absolute title over the subject matter.

34. Further, the term '*vesting'* is also used in other contexts such as the *Indian Succession Act, 1925* wherein *S. 211* vests the deceased's estate in the administrator or executor, although neither become the owner of the said property but merely hold the same until it is distributed among the lawful successor(s). The term 'vests' in *S. 109A of* the *Companies Act 1956* is therefore required to be interpreted in these logical lines.

35. In the context of the facts of the present case, *S. 109A of the Companies Act (pari materia to S. 72 of the Companies Act, 2013)* provides for vesting of shares/debentures of a share/debenture holder unto his nominee '*in the event of his death'*. Similarly, *Bye-law 9.11.1 under the Depositories Act, 1996* provides for '*vesting'* of the securities unto the nominee on the death of the beneficial owner. Applying the law laid down in the aforenoted decisions of this Court, the use of the word '*vest'* does not by itself, confer ownership of the shares/ securities in question, to the nominee. The vesting of the shares/ securities in the nominee under the *Companies Act, 1956* and the *Depositories Act, 1996* is only for a limited purpose, i.e., to enable the Company to deal with the securities thereof, in the immediate aftermath of the shareholder's death and to avoid uncertainty as to the holder of the securities, which could hamper the smooth functioning of the affairs of the company. Therefore, the contrary argument of the appellants on this aspect is rejected.

EFFECT OF NON-OBSTANTE CLAUSE

36. In a similar vein, the appellants contend that the '*non-obstante clause*' in *S. 109A of the Companies Act, 1956* confers overriding effect to the nomination over any other law and disposition, testamentary or otherwise, and entitles the nominee absolute rights over the shares/ securities. Such a clause was also found in the *Banking Regulation Act, 1949* and the *Government Savings Certificate Act, 1959.* However, while interpreting the provision concerning nomination in those enactments, this Court in *Talwar* *(supra)* rejected the argument that the nominee would be the absolute owner of the subject matter, to the exclusion of the legal heirs, because of the non obstante clause. In addition, in *Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani*[19], it was held that the non-obstante clause is to be applied in view of the scheme and object of the enactment in question. The relevant extract on the ruling is reproduced herein:

"11. It is contended on behalf of the appellants that the non obstante clause in Section 6 excludes all other persons, including the legal heirs of the deceased holder, to claim any right over the sum paid on account of the National Savings Certificates, to the nominee. There is no doubt that by the non obstante clause the legislature devises means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words, such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to the measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made have to be kept in mind."

(Emphasis supplied)

37. It is settled law that general words and phrases used in a statute, regardless of their wide ambit, must be interpreted taking into account the objects of the statute. The clauses & sections within a statute are not to be read in isolation, but their textual interpretation is determined by the scheme of the entire statute.[20] Notably, *a non-obstante* clause is to be considered on the basis of the context within which it is used, as has also been observed in *R.S. Raghunath v. State of Karnataka*.[21] Applying the aforestated rule of interpretation, the *non-obstante* clause in *S. 109A* of the *Companies Act, 1956* should also be interpreted keeping in mind the scheme of the *Companies Act, 1956* and the intent of introduction of nomination

19 (2000) 6 SCC 724
20 *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.*, (1987) 1 SCC 424
21 (1992) 1 SCC 335

facility under *S. 109A & S.109B of the Companies Act, 1956* vide the *Companies (Amendment) Act, 1999* wherein emphasis was laid on building investor confidence and bringing the company law in tune with policies of liberalisation & deregulation. With this backdrop, it can be 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.

38. As per *Bye-law 9.11.7 of the Depositories Act, 1996*, the *non-obstante* clause confers overriding effect to the nomination over any other disposition/nomination '*for the purposes of dealing with the securities lying to the credit of deceased nominating person(s) in any manner'*. Therefore, the purpose of invoking such a *non-obstante* clause is clearly delineated and limited to the extent of enabling the depository to deal with the securities, in the immediate aftermath of the securities holder's death. The upshot of the above discussion is that the non-obstante clause in both *S. 109A(3) of the Companies Act, 1956 & Bye-law 9.11.7 of the Depositories Act, 1996* cannot be held to exclude the legal heirs from their rightful claim over the securities, against the nominee.

NO THIRD LINE OF SUCCESSION CONTEMPLATED UNDER COMPANIES ACT

39. The appellants also contend that a nomination validly made under *S. 109A of the Companies Act, 1956 and Bye-law 9.11 of the Depositories Act, 1996* constitutes a *'statutory testament*' that overrides testamentary/intestate succession. It is worth noting that the argument of nomination as a *'statutory testament'* in respect of instruments such as life insurance policies, government savings certificates, provident fund etc. were considered and emphatically rejected by this Court in multiple rulings.

40. In *Sarbati Devi* *(supra)* this Court held that nomination under *S. 39* of the *Life Insurance Act, 1938* does not contemplate a third line of succession styled as a '*statutory testament*' and any amount paid to a nominee on the policy holder's death forms a part of the estate of the deceased policy holder and devolves upon his/her heirs, as per testamentary or intestate succession. Further, in *Ram Chander Talwar (supra)*, while discussing the rights of a nominee of a deceased depositor (*S. 45-ZA(2) Banking Regulation Act, 1949*), this court concluded that the right to receive the money lying in the depositor's account was to be conferred on the nominee but the nominee would not become the owner of such deposits. The said deposit is a part of the deceased depositor's estate and is subject to the laws of succession, that governs the depositor.

41. The appellants' have contended that nominations under *S. 109A* of the *Companies Act, 1956 & Bye-law 9.11 of the 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*'. However, aforesaid argument is not acceptable for the following reasons:

a. The *Companies Act, 1956* does not contemplate a 'statutory testament' that stands over and above the laws of succession,

b. The *Companies Act, 1956* as iterated above is concerned with regulating the affairs of corporates and is not concerned with laws of succession.

c. The 'statutory testament' by way of nomination is not subject to the same rigours as is applicable to the formation & validity of a will under the succession laws, for instance, *S. 63 of the Indian Succession Act,* wherein the rules for execution of a Will are laid out.

42. Therefore, the argument by the appellants of nomination as a '*statutory testament*' cannot be countenanced simply because the *Companies Act, 1956* does not deal with succession nor does it override the laws of succession. It is beyond the scope of the company's affairs to facilitate succession planning of the shareholder. In case of a will, it is upon the administrator or executor under the *Indian Succession Act, 1925,* or in case of intestate succession, the laws of succession to determine the line of succession.

CONCLUSION

43. Consistent interpretation is given by courts on the question of nomination, i.e., upon the holder's death, the nominee would not get an absolute title to the subject matter of nomination, and those would apply to the *Companies Act, 1956 (pari materia* provisions in *Companies Act, 2013)* and the *Depositories Act, 1996* as well.

44. An individual dealing with estate planning or succession laws understands nomination to take effect in a particular manner and expects the implication to be no different for devolution of securities *per se.* Therefore, an interpretation otherwise would inevitably lead to confusion and possibly complexities, in the succession process, something that ought to be eschewed. At this stage, it would be prudent to note the significance of a settled principle of law. In *Shanker Raju v. Union of India*, the Court held:[22]

"10. It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim stare decisis et non quieta movere, which means "to stand by decisions and not to disturb what is settled". Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace". The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible."

45. The vesting of securities in favour of the nominee contemplated under *S. 109A of the Companies Act 1956 (pari materia S. 72 of Companies Act, 2013) & Bye-Law 9.11.1 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. The object of introduction of nomination facility *vide* the *Companies (Amendment) Act, 1999* was only to provide an impetus to the investment climate and ease the cumbersome process of obtaining various letters of succession, from different authorities upon the shareholder's death.

22 (2011) 2 SCC 132

46. Additionally, there is a complex layer of commercial considerations that are to be taken into account while dealing with the issue of nomination pertaining to companies or until legal heirs are able to sufficiently establish their right of succession to the company. Therefore, offering a discharge to the entity once the nominee is in picture is quite distinct from granting ownership of securities to nominees instead of the legal heirs. Nomination process therefore does not override the succession laws. Simply said, there is no third mode of succession that the scheme of the *Companies Act, 1956 (pari materia provisions in Companies Act, 2013)* and *Depositories Act, 1996* aims or intends to provide.

47. Upon a careful perusal of the provisions within the *Companies Act*, it is clear that it does not deal with the law of succession. Therefore, a departure from this settled position of law is not at all warranted. The impugned decision takes the correct view. The appeal is accordingly dismissed without any order on cost.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal dismissed.